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WASHINGTON, DC

WHEN: February 20, 2001, from 9:00 a.m. to Noon (E.S.T.)

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of a decrease in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

DATES: The amendments to part 201 (Regulation A) were effective January 31, 2001. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board, at (202) 452–3259, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The ''basic discount rate'' is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit for up to 30 days. In decreasing the basic discount rate from 5.5 percent to 5.0 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 50-basis-point decrease in the discount rate was associated with a similar decrease in the federal funds rate approved by the Federal Open Market Committee and announced at the same time.

Consumer and business confidence has eroded further, exacerbated by rising energy costs that continue to drain consumer purchasing power and press on business profit margins. Partly as a consequence, retail sales and business spending on capital equipment have weakened appreciably. In response, manufacturing production has been cut back sharply, with new technologies appearing to have accelerated the response of production and demand to potential excesses in the stock of inventories and capital equipment.

Taken together, and with inflation contained, these circumstances have called for a rapid and forceful response of monetary policy. The longer-term advances in technology and accompanying gains in productivity, however, exhibit few signs of abating and these gains, along with the lower interest rates, should support growth of the economy over time.

Nonetheless, the Committee continues to believe that against the background of its long-run goals of price stability and sustainable economic growth and of the information currently available, the risks are weighted mainly toward conditions that may generate economic weakness in the foreseeable future.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	5.0	January 31, 2001
New York	5.0	January 31, 2001.
Philadelphia	5.0	January 31, 2001.
Cleveland	5.0	January 31, 2001.

Federal Reserve Bank	Rate	Effective
Richmond	5.0	January 31, 2001.
Atlanta	5.0	January 31, 2001.
Chicago	5.0	January 31, 2001.
St. Louis	5.0	February 1, 2001.
Minneapolis	5.0	January 31, 2001.
Kansas City	5.0	February 1, 2001.
Dallas	5.0	January 31, 2001.
San Francisco	5.0	January 31, 2001.

Dated: By order of the Board of Governors of the Federal Reserve System, February 7, 2001.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 01–3564 Filed 2–12–01; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–56–AD; Amendment 39–12104; AD 2001–03–03]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B and 214B–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron, Inc. (BHTI) Model 214B and 214B–1 helicopters. This action requires, within 10 hours time-in-service (TIS), determining the hours TIS for certain main rotor outboard strap fitting assemblies and creating appropriate records. This action also requires, if any main rotor outboard strap fitting assembly (strap fitting) is determined to have 2,500 or more hours TIS or the hours TIS cannot be determined, replacing the strap fitting with an airworthy strap fitting before further flight. This action also establishes a 2,500-hour retirement life for the strap fitting and revises the Airworthiness Limitations section accordingly. This amendment is prompted by fatigue testing that indicates a fatigue crack may occur in the strap fitting with resulting failure. The actions specified in this AD are intended to prevent failure of a strap fitting, separation of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective February 28, 2001.

Comments for inclusion in the Rules Docket must be received on or before April 16, 2001.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–56–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0111, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for BHTI Model 214B and 214B–1 helicopters. This action requires, within 10 hours TIS, determining the hours TIS for each strap fitting, P/N 214–010–185–107, and creating a component history card or equivalent record for each strap fitting. This action also requires that if a strap fitting has 2,500 or more hours TIS or if the hours TIS cannot be determined, replacing the strap fitting with an airworthy strap fitting before further flight. This strap fitting is structurally identical to strap fitting, P/N 214–010–189–103, which currently has a retirement life of 2,500 hours. The strap fitting has been sold for spares since approximately 1982. This amendment is prompted by fatigue testing which indicates that a fatigue crack may occur in the strap fitting leading to failure of the strap fitting if it is allowed to remain in service in excess of 2,500 hours. The actions specified in this AD are intended to prevent a failure of a strap fitting, separation of a main rotor blade, and subsequent loss of control of the helicopter.

The FAA has reviewed BHTI Alert Service Bulletin 214–00–62, dated June 2, 2000, which describes procedures for establishing a 2,500-hour airworthiness life pending formal revision of the 214B series Maintenance Manual and provides information to determine continued serviceability for strap fitting, P/N 214–010–185–107.

We have identified an unsafe condition that is likely to exist or develop on other BHTI Model 214B and 214B–1 helicopters of the same type design. Therefore, this AD is being issued to require the following for each strap fitting, P/N 214–010–185–107:

- Within 10 hours TIS, by referring to the helicopter maintenance records, create a component history card or equivalent record for each strap fitting and record the hours TIS and serial number.
- If the hours TIS cannot be determined, replace the strap fitting with an airworthy strap fitting before further flight.
- If the strap fitting has accumulated 2,500 or more hours TIS, replace it with an airworthy strap fitting before further flight.
- Continue to record the subsequent hours TIS.
- Revise the Airworthiness Limitations section of the maintenance manual by establishing a retirement life of 2,500 hours TIS for the strap fitting.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, replacing any strap fitting, P/N 214–010–185–107, that has 2,500 or more hours TIS or a strap fitting for which the hours TIS cannot be determined is required within 10 hours TIS, and this AD must be issued immediately.

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

The FAA estimates that 11 helicopters will be affected by this proposed AD, that it will take approximately 14 work hours to replace each of the 2 strap fittings, 2 work hours to create a new component history card, and 10 work hours annually to maintain the records, and that the average labor rate is $60 per

work hour. Required parts will cost approximately $4807 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $79,277 the first year assuming all strap fittings will be replaced.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2000–SW–56–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2001–03–03 Bell Helicopter Textron, Inc.: Amendment 39–12104. Docket No. 2000–SW–56–AD.

Applicability: Model 214B and 214B–1 helicopters, with a main rotor outboard strap fitting assembly (strap fitting), part number (P/N) 214–010–185–107, installed, certificated in any category.

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

Compliance: Within 10 hours time-in-service (TIS), unless accomplished previously.

To prevent failure of a strap fitting, separation of a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

Note 2: Bell Helicopter Textron Alert Service Bulletin 214–00–62 dated June 2, 2000, pertains to the subject of this AD.

(a) By referring to the helicopter maintenance records, create a component history card or equivalent record for each strap fitting, and record the hours TIS and serial number.

(1) If the hours TIS cannot be determined, replace the strap fitting with an airworthy strap fitting before further flight.

(2) If the strap fitting has accumulated 2,500 or more hours TIS, replace it with an airworthy strap fitting before further flight.

(b) After accomplishing paragraph (a) of this AD, continue to record the subsequent hours TIS.

(c) This AD revises the Airworthiness Limitations section of the maintenance manual by establishing a life limit of 2,500 hours TIS for the strap fitting, P/N 214–010–185–107.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on February 28, 2001.

Issued in Fort Worth, Texas, on February 1, 2001.

Eric Bries,

Acting Manager, Rotorcraft Directorate,, Aircraft Certification Service.

[FR Doc. 01–3179 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2001–ASW–03]

Establishment of Class E Airspace, Sugar Land, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment establishes Class E airspace at Sugar Land, TX. This action is prompted by a non-federal air traffic control tower that currently

operates only during specified hours at this airport. The intended effect of this rule is to provide adequate controlled airspace for aircraft operating in the vicinity of Sugar Land Municipal/Hull Field, Sugar Land, TX. when the control tower is not operating.

DATES: Effective 0901 UTC, May 17, 2001. Comments must be received on or before March 30, 2001.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2001–AWS–03, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes Class E airspace at Sugar Land, TX. This action is prompted by a non-federal air traffic control tower that currently operates only during specified hours at this airport. The intended effect of this rule is to provide adequate controlled airspace for aircraft operating in the vicinity of Sugar Land Municipal/Hull Field, Sugar Land, TX. when the control tower is not operating. On March 4, 1999, a proposal to amend 14 CFR part 71 to establish Class D and Class E airspace at Sugar Land, TX, was published in the **Federal Register** (64 FR 10410). The proposal was to establish Class D and Class E airspace extending upward from the surface to and including 2,600 feet MSL, within a 4.2-mile radius of the Sugar Land Municipal/Hull Airport, Sugar Land, TX. The published notice proposed to establish Class E airspace to protect aircraft operations while the control tower was not operating. However, the necessary weather equipment was not available, therefore, the Class D airspace reverted to Class G airspace when the control tower is not in operation. Since weather equipment is necessary for Class E surface airspace, a final rule establishing only Class D airspace was published (64 FR 51208, September 22, 1999. The weather equipment is now available and operational.

Class E airspace designations are published in Paragraph 6002 of FAA Order 7600.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document will be published in the **Federal Register**. This document may withdraw the direct final rule in whole or in part. After considering the adverse or negative comment, we may publish another direct final rule or publish a notice of proposed rulemaking with a new comment period.

Comments Invited

Although this action is in the form of a final rule, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–AWS–03.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that 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) 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. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, *Airspace Designations and Reporting Points,* dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW TX E2 Houston Sugar Land, TX [New]

Sugar Land, Sugar Land Municipal Airport/Hull Field, TX
(Lat. 29°37′20″N., long. 95°39′24″W.)
Within a 4.2-mile radius of Sugar Land Municipal/Hull Field. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX on January 25, 2001.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 01–3645 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–10]

Modification of Class E Airspace, St. George, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the St. George, UT, Class E airspace to accommodate airspace required for the establishment of a new Standard Instrument Approach Procedure (SIAP) to the St. George Municipal Airport, St. George, UT.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 99–ANM–10, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On September 21, 2000, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at St. George, UT, in order to accommodate a new Area Navigation (RNAV) SIAP to Runway 34 at St. George Municipal Airport, St. George, UT (65 FR 184). This amendment provides additional Class E5 airspace at St. George, UT, to meet current criteria standards associated with the SIAP. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) modifies Class E airspace at St. George, UT, in order to accommodate a new SIAP to the St. George Municipal Airport, St. George, UT. This amendment modifies Class E5 airspace at St. George, UT, to meet current criteria standards associated with the SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and enroute environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the St. George Municipal Airport and between the terminal and enroute transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

ANM UT E5 St. George, UT [Revised]

St. George Municipal Airport, UT
(Lat. 37°05′26″N., long. 113°35′35″W.)
St. George VOR/DME
(Lat. 37°05′17″N., long. 113°35′31″W.)

That airspace extending upward from 700 feet above the surface within 8.3 miles northeast and 5.3 miles southwest of the St. George VOR/DME 131° and 311° radials extending from 6.1 miles northwest to 16.1 miles southeast, and within 5.9 miles each side of the St. George VOR/DME 183° radial extending from the VOR/DME to 18.2 miles south; and that airspace extending upward from 1,200 feet above the surface within the 30-mile radius of lat. 36°48′52″N., long. 113°35′37″W., extending clockwise from 256° bearing to the 076° bearing, and within 30 miles radius of lat. 36°48′53″N., long. 113°43′06″W., extending clockwise from the 076° bearing to the 166° bearing of lat. 36°48′52″N., long. 113°35′37″W., and within

30 miles radius of lat. 36°48′52″N., long. 113°29′24″W., extending counterclockwise from the 256° bearing to the 166° bearing of lat. 36°48′52″N., long. 113°35′37″W.; excluding that portion of airspace within the Colorado City, AZ, 700 and 1,200 feet Class E airspace area; that portion of airspace within the Mesquite, NV, 700 feet Class E airspace; that portion of airspace for V–235 southeast of the Mormon Mesa VORTAC that portion of airspace for V–235 northeast of the Mormon Mesa VORTAC; that portion of airspace for V–21 northeast of the Mormon Mesa VORTAC.

* * * * *

Issued in Seattle, Washington, on January 31, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–3647 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–1]

Establishment of Class E2 Airspace; Tri-City, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E2 airspace at Tri-City, for the Tri-City Regional Airport. The Tri-City Airport Traffic Control Tower is a part time facility. When the control tower is closed, Atlanta Air Route Traffic Control Center (ARTCC) provides approach control service. This requires establishment of Class E2 surface area airspace.

EFFECTIVE DATE: March 13, 2001.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter, Jr., Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

The Tri-City Regional Airport lies within Class D airspace. The Tri-City Airport Traffic Control Tower hours of operation have changed and it is now a part time facility. When the control tower closes, Atlanta ARTCC provides approach control service for the Tri-City Regional Airport. Since the Atlanta ARTCC provides approach control service and the proper classification of airspace to accommodate aircraft conducting standard instrument approach procedures is not available, flight safety interests may be affected. Accordingly, immediate corrective action is taken herein, in the interest of flight safety, to establish Class E2 airspace in the vicinity of Tri-City Regional Airport. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Designations for Class E are published in FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E2 airspace at Tri-City, TN.

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 citiation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ASO TN E2 Tri-City, TN [New]

Tri-City Regional Airport, TN
(Lat. 36°28′30″N, long. 82°24′27″W)
Tri-City Localizer
(Lat. 36°27′44″N, long. 82°25′22″W)

Within a 4.3-mile radius of Tri-City Regional Airport and within 2 miles each side of Tri-City localizer northeast course, extending from the 4.3-mile radius of Tri-City Regional Airport to the OM. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on January 23, 2001.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–3651 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–26]

RIN 2120–AA66

Modification and Revocation of VOR and Colored Federal Airways and Jet Routes; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on June 6, 2000. In that rule, the legal description of Colored Federal Airway Green 8 (G–8) contained an inadvertent error that excluded the Glenallen, AK, NDB Intersection from the description of G–8. This action corrects that error.

EFFECTIVE DATE: February 13, 2001.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On June 6, 2000, Airspace Docket No. 98–AAL–26 (65 FR 35822; FR Doc. 00–14044) was published for the modification and revocation of VOR and Colored Federal Airways, and Jet Routes in Alaska. Included in this rule was the amendment to the legal description of G–8 which omitted the Glenallen, AK, NDB Intersection. This action adds the Glenallen intersection to the legal description of G–8, thereby correcting this error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for Colored Federal Airway G–8, as published in the **Federal Register** on June 6, 2000 (65 FR 35822; FR Doc. 00–14044), and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 35823, correct the legal description of the G–8, to read as follows:

Paragraph 6009 (a)—Green Federal Airways

* * * * *

G–8 [Revised]

From Shemya, AK, NDB, 20 AGL , Mount Moffet, NDB, AK; 20 AGL Dutch Harbor, AK, NDB; 20 AGL INT Dutch Harbor NDB 041° and Elfee, AK, NDB 253° bearings; 20 AGL Elfee NDB; 20 AGL Saldo, AK, NDB; INT Saldo NDB 054° and Kachemak, AK, NDB 269° bearings, to Kachemak NDB. From Campbell Lake, AK, NDB; INT Campbell Lake NDB 031° and Glenallen, AK, NDB 255° bearings; Glenallen NDB; INT Glenallen NDB 052° and Nabesna, AK, NDB 252° bearings; Nabesna NDB.

* * * * *

Issued in Washington, DC, on January 23, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–3642 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–07]

RIN 2120–AA66

Revision of VOR Federal V–480 and Jet Route J–120; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule

SUMMARY: This action revises Very High Frequency Omnidirectional Range (VOR) Federal Airway 480 (V–480) and Jet Route 120 (J–120) in Alaska by adding a routinely used route segment between Mt. Moffett and St. Paul Island, AK. The FAA is revising these routes for the following reasons: The conversion of this uncharted nonregulatory route to a VOR Federal airway and jet route will add additional instrument flight rules (IFR) airway and route infrastructure in Alaska; pilots will be provided with minimum en route altitudes and minimum obstruction clearance altitudes information; to establish controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and to improve the management of air traffic operations and thereby enhance safety.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On October 11, 2000, the FAA proposed to amend 14 CFR part 71 (part 71) to revise V–480 and J–120 (65 FR 60385). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. With the exception of editorial changes, this amendment is the same as that proposed in the notice.

The Rule

The FAA is amending part 71 to revise V–480 and J–120 in Alaska. The revision to V–480 and J–120 will add a routinely used route segment between Mt. Moffett and St. Paul Island, AK. Presently, there is an uncharted nonregulatory route segment with the same routing as this airway and jet route revision. The current route is used by air carrier and general aviation aircraft. The FAA is revising these routes for the following reasons: (1) The conversion of this uncharted nonregulatory route to a VOR Federal airway and jet route will add additional IFR airway and route infrastructure in Alaska; (2) pilots would be provided with minimum en route altitudes and minimum obstruction clearance altitude information; (3) to establish controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (4) to improve the management of air traffic operations and thereby enhance safety.

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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes are published in paragraph 2004 and Alaskan VOR Federal airways are published in paragraph 6010(b) of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The jet route and the Alaskan VOR Federal airway listed in this document will be published subsequently in the Order.

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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–120 [Revised]

From Mt. Moffett, AK, NDB via St. Paul Island, AK, NDB; Bethel, AK; McGrath, AK; Fairbanks, AK; Fort Yukon, AK; to the Barter Island, AK, NDB.

* * * * *

Paragraph 6010(b)—Alaskan VOR Federal Airways

* * * * *

V–480 [Revised]

From Mt. Moffett, AK, NDB, 20 AGL via St. Paul Island, AK, NDB, 20 AGL, Kipnuk, AK; Bethel, AK, McGrath, AK, Nenana, AK; to Fairbanks, AK.

* * * * *

Issued in Washington, DC, on January 23, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–3643 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30231; Amdt. No. 427]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, March 22, 2001.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Program Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: PO Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 95

Airspace, Navigation (air).

Issued in Washington, DC on February 5, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 427 effective March 22, 2001]

From	To	MEA
Color Routes		
§ 95.4 Green Federal Airway 8 is Amended to Read in Part		
Campbell Lake, AK NDB	Glennallen, AK NDB	10200
Victor Routes-U.S.		
§ 95.6221 VOR Federal Airway 221 is Amended by Adding		
Bible Grove, IL VORTAC	Hoosier, in VORTAC	3000

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 427 effective March 22, 2001]

From	To	MEA
§ 95.6370 VOR Federal Airway 370 is Amended to Read in Part		
Garne, CA FIX	*Palm Springs, CA VORTAC.	
W BND E BND *11600—MCA Palm Springs, CA VORTAC, W BND *6200—MCA Palm Springs, CA VORTAC, NE BND		1200 8000
§ 95.6480 VOR Federal Airway 480 is Amended by Adding		
Mount Moffett, AK NDB/DME	St. Paul Island, AK NDB/DME	5900 MAA— 17500
§ 95.6566 VOR Federal Airway 566 is Amended to Read in Part		
Alexandria, LA VORTAC *1700—MOCA	Mushe, LA FIX	*3000
Mushe, LA FIX *3000—MRA **1700—MOCA	*Wrack, LA FIX	**4000
Wrack, LA FIX *2100—MOCA	Veils, LA FIX	*3000
Veils, LA FIX *1500—MOCA	Reserve, LA VOR/DME	*2000

From	To	MEA	MAA
Jet Routes **§ 95.7120 Jet Route No. 120 is Amended by Adding**			
Mount Moffett, AK NDB/DME	St. Paul Island, AK NDB/DME	18000	45000

[FR Doc. 01–3654 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30229; Amdt. No. 2035]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by

reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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 ass the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 2, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective March 22, 2001*

Aniak, AK, Aniak, LOC/DME RWY 10, Amdt 3
Aniak, AK, Aniak, ILS/DME RWY 10, Amdt 7
Aniak, AK, Aniak, NDB–A, Amdt 1
Aniak, AK, Aniak, NDB/DME RWY 28, Amdt 3
Aniak, AK, Aniak, GPS RWY 10, Orig, CANCELLED
Aniak, AK, Aniak, RNAV (GPS) RWY 10, Orig
Aniak, AK, Aniak, RNAV (GPS) RWY 28, Orig
Barrow, AK, Wiley Post-Will Rogers Mem, VOR/DME RWY 24, Amdt 1
Barrow, AK, Wiley Post-Will Rogers Mem, LOC/DME BC RWY 24, Amdt 3
Barrow, AK, Wiley Post-Will Rogers Mem, GPS RWY 6, Orig, CANCELLED
Barrow, AK, Wiley Post-Will Rogers Mem, RNAV (GPS) RWY 6, Orig
Foley, AL, Foley Muni, GPS RWY 18, Orig CANCELLED
Foley, AL, Foley Muni, RNAV (GPS) RWY 18, Orig
Foley, AL, Foley Muni, GPS RWY 36, Orig, CANCELLED
Foley, AL, Foley Muni, RNAV (GPS) RWY 36, Orig
Sacramento, CA, Mather Field, ILS RWY 22L, Amdt 1
Salmon, ID, Lemhi Co, VOR/DME–B, Orig
Salmon, ID, Lemhi Co, RNAV–C, Orig
Ames, IA, Ames Muni, NDB OR GPS RWY 1, Amdt 1B
Ames, IA, Ames Muni, GPS RWY 19, Orig–A
Des Moines, IA, Des Moines Intl, NDB OR GPS RWY 31R, Amdt 19A
Spencer, IA, Spencer Muni, VOR OR GPS RWY 12, Amdt 2B
Spencer IA, Spencer Muni, NDB RWY 12, Amdt 1B
Alexandria, MN, Chandler Field, VOR RWY 22, Amdt 15
Alexandria, MN, Chandler Field, RNAV (GPS) RWY 31, Orig
Moorehead, MN, Moorhead Muni, VOR–A, Amdt 1
Moorhead, MN, Moorhead Muni, GPS RWY 30, Orig, CANCELLED
Moorhead, MN, Moorhead Muni, RNAV (GPS) RWY 30, Orig
Cape Girardeau, MO, Cape Girardeau Regional, LOC/DME BC RWY 28, Amdt 6A
Cape Girardeau, MO, Cape Girardeau Regional, NDB OR GPS RWY 10, Amdt 9A
Joplin, MO, Joplin Regional, LOC BC RWY 31, Amdt 20A
Imperial, NE, Imperial Muni, NDB RWY 31, Amdt 3
Imperial, NE, Imperial Muni, GPS RWY 31, Orig, CANCELLED
Imperial, NE, Imperial Muni, RNAV (GPS) RWY 31, Orig
Sidney, NY Sidney Muni, RNAV (GPS) RWY 7, Orig
Sidney, NY Sidney Muni, VOR/DME or GPS–B, Amdt 2B, CANCELLED
Watertown, NY, Watertown Intl, RNAV (GPS) RWY 7, Orig
Zanesville, OH, Zanesville Muni, NDB OR GPS–A, Amdt 1, CANCELLED
Perkasie, PA, Pennridge, GPS RWY 8, Orig, CANCELLED
Perkasie, PA, Pennridge, GPS RWY 26, Orig, CANCELLED
Perkasie, PA, Pennridge, RNAV (GPS) RWY 8, Orig
Perkasie, PA, Pennridge, RNAV (GPS) RWY 26, Orig
Dayton, TN, Mark Anton, GPS RWY 21, Orig, CANCELLED
Dayton, TN, Mark Anton, RNAV (GPS) RWY 21, Orig

Del Rio, TX, Del Rio Intl, LOC RWY 13, Orig
Del Rio, TX, Del Rio Intl, NDB RWY 13, Orig
Del Rio, TX, Del Rio Intl, LOC RWY 13, Amdt 4, CANCELLED
Del Rio, TX, Del Rio Intl, NDB RWY 13, Amdt 3, CANCELLED
Houston, TX, George Bush Intercontinental, ILS RWY 8, Amdt 19
Houston, TX, William P. Hobby, ILS RWY 30L, Amdt 5
Salt Lake City, UT, Salt Lake City Intl, RNAV (GPS) RWY 34L, Orig
Salt Lake City, UT, Salt Lake City Intl, RNAV (GPS) RWY 34R, Orig
Salt Lake City, UT, Salt Lake City Intl, RNAV (GPS) RWY 35, Orig

[FR Doc. 01–3655 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30227; Amdt. No. 2033]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following PDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice of Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 19, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § COPTER SIAPS, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC number	SIAP
8/23/00	LA	NEW IBERIA	ACADIANA REGIONAL	0/0184	VOR/DME RWY 34, AMDT 1A.
2/25/00	NJ	NEWARK	NEWARK INTL	0/5494	COPTER ILS/DME RWY 22L, ORIG.
1/02/01	WI	GREEN BAY	AUSTIN STRAUBEL INTL	1/0030	RADAR–1, AMDT 9.
1/02/01	NC	ROCKY MOUNT	ROCKY MOUNT–WILSON REGIONAL.	1/0032	ILS RWY 4, AMDT 15.
1/02/01	NC	ROCKY MOUNT	ROCKY MOUNT–WILSON REGIONAL.	1/0033	NDB OR GPS RWY 4 AMDT 8.
1/02/01	FL	TAMPA	VANDENBURG	1/0037	GPS RWY 18, AMDT 1B.
1/02/01	FL	TAMPA	VANDENBURG	1/0042	GPS RWY 23, ORIG–B.
1/02/01	LA	EUNICE	EUNICE	1/0051	NDB OR GPS RWY 16, ORIG–B.
1/02/01	IL	LITCHFIELD	LITCHFIELD MUNI	1/0052	GPS RWY 9, ORIG.
1/02/01	IL	LITCHFIELD	LITCHFIELD MUNI	1/0053	GPS RWY 27, ORIG.
1/02/01	ND	PEMBINA	PEMBINA MUNI	1/0054	VOR OR GPS RWY 33, AMDT 6A.
1/02/01	LA	EUNICE	EUNICE	1/0055	VOR/DME OR GPS–A, AMDT 2.
1/03/01	NC	GREENSBORO	PIEDMONT TRIAD INTL	1/0060	VOR/DME OR GPS RWY 23, AMDT 9B.
1/03/01	AZ	PHOENIX	PHOENIX SKY HARBOR	1/0072	ILS RWY 25L, ORIG–A.
1/03/01	SD	SIOUX FALLS	JOE FOSS FIELD	1/0101	ILS RWY 21, AMDT 9.
1/03/01	SD	SIOUX FALLS	JOE FOSS FIELD	1/0102	VOR OR TACAN OR GPS RWY 15, AMDT 20.
1/03/01	OR	MEDFORD	ROGUE VALLEY INTL-MEDFORD	1/0107	ILS RWY 14, ORIG–A.
1/04/01	TX	MIDLAND	MIDLAND INTL	1/0124	VOR/DME OR TACAN RWY 34L, AMDT 9B.
1/04/01	TX	MONAHANS	ROY HURD MEMORIAL	1/0133	GPS RWY 12, ORIG–A.
1/04/01	TX	MONAHANS	ROY HURD MEMORIAL	1/0136	NDB RWY 12, ORIG.
1/04/01	TX	MONAHANS	ROY HURD MEMORIAL	1/0138	VOR/DME RWY 12, AMDT 1.
1/05/01	FL	JACKSONVILLE	JACKSONVILLE INTL	1/0168	RADAR–1, AMDT 6B.
1/08/01	OK	STILLWATER	STILLWATER REGIONAL	1/0275	VOR/DME RWY 35, ORIG–A.
1/09/01	OK	STILLWATER	STILLWATER REGIONAL	1/0287	ILS RWY 17, ORIG.
1/09/01	OK	STILLWATER	STILLWATER REGIONAL	1/0288	VOR RWY 17, AMDT 13B.
1/10/01	VI	ST. THOMAS	CYRIL E. KING, CHARLOTTE AMALIE.	1/0335	RNAV RWY 10, ORIG.
1/10/01	NJ	LAKEWOOD	LAKEWOOD	1/0336	VOR RWY 6 AMDT 5.
1/10/01	NJ	VINCENTOWN	RED LION	1/0337	VOR OR GPS–A AMDT 5A.
1/10/01	NJ	OCEAN CITY	OCEAN CITY MUNI	1/0342	GPS RWY 6 ORIG.
1/15/01	TX	MONAHANS	ROY HURD MEMORIAL	1/0393	GPS RWY 30, ORIG–A.
1/15/01	OH	MIDDLETOWN	HOOK FIELD MUNI	1/0408	LOC RWY 23, AMDT 7E.
1/15/01	OH	MIDDLETOWN	HOOK FIELD MUNI	1/0409	NDB OR GPS RWY 23, AMDT 8C.
1/15/01	LA	RESERVE	ST. JOHN THE BAPTIST	1/0414	VOR RWY 35, ORIG.
1/15/01	LA	RESERVE	ST. JOHN THE BAPTIST	1/0415	GPS RWY 17, ORIG.
1/15/01	NY	BUFFALO	BUFFALO NIAGARA INTL	1/0398	VOR/DME RNAV OR GPS RWY 23 ORIG.
1/15/01	NY	WHITE PLAINS	WESTCHESTER COUNTY	1/0385	ILS RWY 16 AMDT 22C.

[FR Doc. 01–3656 Filed 2–12–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30228; Amdt. No. 2034]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAP's, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include ''or GPS or FMS'' in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove ''or GPS or FMS'' from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as ''RNAV'' will be redesignated as ''VOR/DME RNAV'' without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 19, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33, 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's effective at 0901 UTC on the dates specified:

** * * Effective March 22, 2001*

Gulkana, AK, Gulkana, VOR or GPS RWY 32, Amdt 6A, CANCELLED
Gulkana, AK, Gulkana, VOR RWY 32, Amdt 6A
Bastrop, LA, Bastrop/Morehouse Memorial, VOR/DME or GPS–A, Amdt 8, CANCELLED
Bastrop, LA, Bastrop/Morehouse Memorial, VOR/DME–A, Amdt 8
Covington, LA, Covington/Greater St. Tammany, VOR/DME or GPS–A, Orig, CANCELLED
Covington, LA, Covington/Greater St. Tammany, VOR/DME–A, Orig
Eunic, LA, Eunice, VOR/DME or GPS–A, Amdt 2, CANCELLED
Eunic, LA, Eunice, VOR/DME–A, Amdt 2
Lake Charles, LA Lake Charles Regional, VOR or GPS–A, Amdt 13, CANCELLED
Lake Charles, LA Lake Charles Regional, VOR–A, Amdt 13
Marksville, LA, Marksville Muni, VOR/DME or GPS–A, Amdt 3A, CANCELLED
Marksville, LA, Marksville Muni, VOR/DME–A, Amdt 3A
Minden, LA, Minden-Webster, VOR/DME or GPS–A, Amdt 4A, CANCELLED
Minden, LA, Minden-Webster, VOR/DME–A, Amdt 4A
New Roads, LA, New Roads/False River Airpark, VOR/DME or GPS–A, Amdt 3A, CANCELLED
New Roads, LA, New Roads/False River Airpark, VOR/DME–A, Amdt 3A
Rayville, LA Rayville/John H. Hooks Jr. Memorial, VOR/DME or GPS–A, Amdt 2, CANCELLED
Rayville, LA, Rayville/John H. Hooks Jr. Memorial, VOR/DME–A, Amdt 2
Sulphur, LA, Sulphur/Southland Field, VOR/DME or GPS–A, Amdt 1, CANCELLED

Sulphur, LA, Sulphur/Southland Field, VOR/DME–A, Amdt 1
Belen, NM, Belen/Alexander Muni, VOR/DME or GPS–A, Amdt 1, CANCELLED
Belen, NM, Belen/Alexander Muni, VOR/DME–A, Amdt 1
Santa Fe, NM, Santa Fe Muni, VOR/DME or GPS–A, Amdt 1, CANCELLED
Santa Fe, NM, Santa Fe Muni, VOR/DME–A, Amdt 1
Silver City, NM, Silver City/Grant County, VOR/DME or GPS–B, Amdt 3A, CANCELLED
Silver City, NM, Silver City/Grant County, VOR/DME–B, Amdt 3A
Silver City, NM, Silver City/Grant County, VOR or GPS–A, Amdt 7A, CANCELLED
Silver City, NM, Silver City/Grant County, VOR–A, Amdt 7A
Socorro, NM, Socorro Muni, VOR/DME or GPS–A, Orig-A, CANCELLED
Socorro, NM, Socorro Muni, VOR/DME–A, Orig-A
Taos, NM, Taos Muni, VOR/DME or GPS–B, Amdt 2B, CANCELLED
Taos, NM, Taos Muni, VOR/DME–B, Amdt 2B
Truth Or Consequences, NM, Truth Or Consequences Muni, VOR or GPS–A, Amdt 9A, CANCELLED
Truth Or Consequences, NM, Truth Or Consequences Muni, VOR–A, Amdt 9A
Ada, OK, Ada Muni, VOR/DME or GPS–A, Orig-B, CANCELLED
Ada, OK, Ada Muni, VOR/DME–A, Orig-B
Altus, OK, Altus Muni, VOR or GPS–A, Amdt 4, CANCELLED
Altus, OK, Altus Muni, VOR–A, Amdt 4
Blackwell, OK, Blackwell-Tonkawa Muni, VOR or GPS–A, Amdt 3, CANCELLED
Blackwell, OK, Blackwell-Tonkawa Muni, VOR–A, Admt 3
Boise City, OK, Boise City, NDB or GPS–A, Amdt 1A, CANCELLED
Boise City, OK, Boise City, NDB–A, Amdt 1A
Buffalo, OK, Buffalo Muni, NDB or GPS–A, Amdt 1, CANCELLED
Buffalo, OK, Buffalo Muni, NDB–A, Amdt 1
Chickasha, OK, Chickasha Muni, VOR/DME or GPS–A, Orig, CANCELLED
Chickasha, OK, Chickasha Muni, VOR/DME–A, Orig
Claremore, OK, Claremore Regional, VOR/DME or GPS–A, Orig, CANCELLED
Claremore, OK, Claremore Regional, VOR/DME–A, Orig
Claremore, OK, Claremore Regional, VOR/DME or GPS–B, Amdt 1, CANCELLED
Claremore, OK, Claremore Regional, VOR/DME–B, Amdt 1
Madill, OK, Madill Muni, VOR/DME or GPS–A, Amdt 3, CANCELLED
Madill, OK, Madill Muni, VOR/DME–A, Amdt 3
Oklahoma City, OK, Oklahoma City/Clarence E. Page Muni, VOR or GPS–B, Amdt 2, CANCELLED
Oklahoma City, OK, Oklahoma City/Clarence E. Page Muni, VOR–B, Amdt 2
Oklahoma City, OK, Oklahoma City/Wiley Post, VOR or GPS–A, Amdt 2A, CANCELLED
Oklahoma City, OK, Oklahoma City/Wiley Post, VOR–A, Amdt 2A
Okmulgee, OK, OKmulgee Muni, VOR or GPS–A, Orig, CANCELLED
Okmulgee, OK, Okmulgee Muni, VOR–A, Orig
Sallisaw, OK, Sallisaw Muni, NDB or GPS–A, Amdt 1, CANCELLED
Sallisaw, OK, Sallisaw Muni, NDB–A, Amdt 1
Sand Springs, OK, Sand Springs/William R. Pogue Muni, VOR or GPS–A, Amdt 2, CANCELLED
Sand Springs, OK, Sand Springs/William R. Pogue Muni, VOR–A, Amdt 2
Tulsa, OK, Tulsa/Richard Lloyd Jones Jr., VOR/DME or GPS–A, Amdt 6, CANCELLED
Tulsa, OK, Tulsa/Richard Lloyd Jones Jr., VOR/DME–A, Amdt 6
Watonga, OK, Watonga, VOR/DME or GPS–A, Amdt 2, CANCELLED
Watonga, OK, Watonga, VOR/DME–A, Amdt 2
Woodward, OK, Woodward/West Woodward, VOR/DME or GPS–A, Amdt 6, CANCELLED
Woodward, OK, Woodward/West Woodward, VOR/DME–A, Amdt 6
Abilene, TX, Abilene Regional, VOR or GPS–A, Amdt 8A, CANCELLED
Abilene, TX, Abilene Regional, VOR–A, Amdt 8A
Amarillo, TX, Amarillo/Tradewind, NDB or GPS–A, Amdt 14, CANCELLED
Amarillo, TX, Amarillo/Tradewind, NDB–A, Amdt 14
Bay City, TX, Bay City Muni, VOR/DME or GPS–A, Amdt 4A, CANCELLED
Bay City, TX, Bay City Muni, VOR/DME–A, Amdt 4A
Beaumont, TX, Beaumont Muni, VOR/DME or GPS RWY 13, Amdt 2, CANCELLED
Beaumont, TX, Beaumont Muni, VOR/DME RWY 13, Amdt 2
Breckenridge, TX, Breckenridge/Stephens County, NDB or GPS–A, Amdt 1A, CANCELLED
Breckenridge, TX, Breckenridge/Stephens County, NDB–A, Amdt 1A
Cleveland, TX, Cleveland Muni, VOR or GPS–A, Amdt 4, CANCELLED
Cleveland, TX, Cleveland Muni, VOR–A, Amdt 4
Del Rio, TX, Del Rio Intl, VOR/DME or GPS–B, Amdt 4, CANCELLED
Del Rio, TX, Del Rio Intl, VOR/DME–B, Amdt 4
Del Rio, TX, Del Rio Intl, VOR or GPS–A, Amdt 11, CANCELLED
Del Rio, TX, Del Rio Intl, VOR–A, Amdt 11
Dumas, TX, Dumas/Moore County, VOR/DME or GPS–A, Admt 6, CANCELLED
Dumas, TX, Dumas/Moore County, VOR/DME–A, Amdt 6
George West, TX, George West/Live Oak County, VOR/DME or GPS–A, Amdt 1, CANCELLED
George West, TX, George West/Live Oak County, VOR/DME–A, Admt 1
Giddings, TX, Giddings-Lee County, VOR/DME or GPS–A, Amdt 3, CANCELLED
Giddings, TX, Giddings-Lee County, VOR/DME–A, Amdt 3
Liberty, TX, Liberty Muni, VOR or GPS–A, Amdt 5, CANCELLED
Liberty, TX, Liberty Muni, VOR–A, Amdt 5
Llano, TX, Llano Muni, VOR or GPS–A, Amdt 3, CANCELLED
Llano, TX, Llano Muni, VOR–A, Admt 3
Lubbock, TX, Lubbock Intl, VOR or GPS–A, Amdt 6, CANCELLED
Lubbock, TX, Lubbock Intl, VOR–A, Amdt 6
McKinney, TX, McKinney Muni, VOR/DME or GPS–A, Orig-B, CANCELLED
McKinney, TX, McKinney Muni, VOR/DME–A, Orig-B
Mexia, TX, Mexia-Limestone County, NDB or GPS–A, Amdt 3, CANCELLED
Mexia, TX, Mexia-Limestone County, NDB–A, Amdt 3
Pampa, TX, Pampa/Perry Lefors Field, VOR/DME or GPS–A, Amdt 2A, CANCELLED
Pampa, TX, Pampa/Perry Lefors Field, VOR/DME–A, Amdt 2A
Pleasanton, TX, Pleasanton Muni, NDB or GPS–A, Amdt 5A, CANCELLED
Pleasanton, TX, Pleasanton Muni, NDB–A, Amdt 5A
Port Isabel, TX, Port Isabel-Cameron County, VOR/DME or GPS–B, Amdt 2A, CANCELLED
Port Isabel, TX, Port Isabel-Cameron County, VOR/DME–B, Amdt 2A
Port Isabel, TX, Port Isabel-Cameron County, VOR or GPS–A, Amdt 5A, CANCELLED
Port Isabel, TX, Port Isabel-Cameron County, VOR–A, Amdt 5A
San Antonio, TX, San Antonio Intl, VOR or GPS–A, Amdt 5A, CANCELLED
San Antonio, TX, San Antonio Intl, VOR–A, Amdt 5A
Sulphur Springs, TX, Sulphur Springs Muni, VOR/DME or GPS–B, Amdt 6, CANCELLED
Sulphur Springs, TX, Sulphur Springs Muni, VOR/DME–B, Amdt 6
Sulphur Springs, TX, Sulphur Springs Muni, VOR or GPS–A, Amdt 4, CANCELLED
Sulphur Springs, TX, Sulphur Springs Muni, VOR–A, Amdt 4

[FR Doc. 01–3657 Filed 2–12–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30230; Amdt. No. 2036]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight

operations under instrument flight rules at the affected airports.

DATE: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on February 2, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

Effective Upon Publication

FDC date	State	City	Airport	FDC number	SIAP
1/17/01	MO	New Madrid	County Memorial	1/0490	VOR/DME RNAV OR GPS Rwy 18, AMDT 1A
1/18/01	LA	Oakdale	Allen Parish	1/0548	NDB Rwy 35, ORIG–B
1/18/01	NE	O'Neill	The O'Neill Muni-John L. Baker Field	1/0504	VOR Rwy 13, AMDT 5A
1/19/01	MS	Meridian	Key Field	1/0580	VOR OR GPS–A, AMDT 15
1/19/01	OK	Enid	Enid Woodring Muni	1/0591	GPS Rwy 17, ORIG
1/19/01	OK	Enid	Enid Woodring Muni	1/0595	ILS Rwy 35 AMDT 4
1/19/01	OK	El Reno	El Reno Muni	1/0605	VOR/DME Rwy 35, AMDT 1A
1/19/01	OK	Tulsa	Tulsa Intl	1/0610	VOR OR TACAN Rwy 26, AMDT 22A
1/19/01	TX	Houston	May	1/0602	VOR/DME OR GPS–A, ORIG–A
1/22/01	AR	Warren	Warren Muni	1/0660	GPS Rwy 21, ORIG–A
1/22/01	OK	Enid	Enid Woodring Muni	1/0640	VOR Rwy 35, AMDT 13
1/22/01	OK	Enid	Enid Woodring Muni	1/0641	VOR Rwy 17, AMDT 12
1/22/01	OK	Enid	Enid Woodring Muni	1/0643	NDB Rwy 35, AMDT 6
1/22/01	OK	Oklahoma City	Sundance Airpark	1/0699	RNAV (GPS) Rwy 35, ORIG
1/22/01	OK	Oklahoma City	Sundance Airpark	1/0701	RNAV (GPS) Rwy 17, ORIG
1/22/01	TX	Monahans	Roy Hurd Memorial	1/0654	VOR/DME Rwy 12, AMDT 1
1/22/01	TX	Monahans	Roy Hurd Memorial	1/0662	GPS Rwy 12, ORIG–A
1/23/01	NC	Southern Pines	Moore County	1/0684	GPS Rwy 23, ORIG–A
1/23/01	NC	Asheville	Asheville Regional	1/0686	NDB OR GPS Rwy 16, AMDT 15A
1/24/01	OK	Norman	University of Oklahoma Westheimer	1/0740	VOR/DME RNAV Rwy 3, ORIG–C
1/24/01	TX	Witchita Falls	Sheppard AFB/Wichita Fall Muni	1/0741	ILS Rwy 33L, AMDT 12C
1/24/01	WI	Medford	Taylor County	1/0719	NDB OR GPS Rwy 33, AMDT 6A
1/25/01	AK	Iliamna	Iliamna	1/0857	NDB OR GPS Rwy 35, ORIG
1/25/01	FL	Lake City	Lake City	1/0783	RNAV(GPS) Rwy 10, ORIG–A
1/25/01	FL	Lake City	Lake City	1/0784	RNAV(GPS) Rwy 28, ORIG–A
1/25/01	FL	Tampa	Vandenburg	1/0816	GPS Rwy 18, AMDT 1B
1/25/01	FL	Tampa	Vandenburg	1/0818	GPS Rwy 23, ORIG–B
1/25/01	LA	Minden	Minden-Webster	1/0750	GPS Rwy 19, ORIG–A
1/25/01	MI	Howell	Livingston County	1/0802	RNAV (GPS) Rwy 13, ORIG
1/25/01	MO	St. Joseph	Rosecrans Memorial	1/0804	LOC BC Rwy 17, AMDT 8C
1/25/01	NM	Santa Fe	Santa Fe Muni	1/0862	ILS Rwy 2, AMDT 5A
1/25/01	OK	Enid	Enid Woodring Muni	1/0858	GPS Rwy 35 ORIG
1/26/01	IN	New Castle	New Castle-Henry County	1/0901	VOR OR GPS Rwy 27 AMDT 9
1/26/01	LA	Homer	Homer Muni	1/0884	GPS Rwy 30, ORIG–A
1/26/01	LA	Homer	Homer Muni	1/0885	NDB OR GPS Rwy 12, AMDT 1A
1/26/01	OH	Lebanon	Lebanon-Warren County	1/0880	RNAV (GPS) Rwy 1, ORIG–A
1/26/01	OH	Lebanon	Lebanon-Warren County	1/0881	RNAV (GPS) Rwy 19, ORIG–A
1/26/01	WI	Madison	Dane County Regional-Truax Field	1/0886	RADAR–1, AMDT 16
1/29/01	AL	Greenville	Greenville Muni	1/0983	GPS Rwy 32, ORIG
1/29/01	AL	Greenville	Greenville Muni	1/0985	GPS Rwy 14, ORIG
1/30/01	CT	Windsor Locks	Bradley Intl	1/0997	VOR OR TACAN Rwy 33 ORIG–A
1/30/01	OR	Prineville	Prineville	1/0995	NDB Rwy 10, ORIG AMDT 15A

[FR Doc. 01–3652 Filed 2–12–01; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30226; Amdt. No. 2032]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective data at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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 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. For the same reason, the FAA certifies that this amendment 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 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on January 19, 2001.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * * Effective February 22, 2001*

Pikeville, KY, Pike County—Hatcher Field, ILS RWY 27, Orig

** * * * Pikeville, KY, Pike County—Hatcher Field, ILS RWY 27, Orig*

** * * * Effective March 22, 2001*

Palm Springs, CA, Palm Springs Intl, VOR OR GPS–B, Amdt 3
Fort Myers, FL, Southwest Florida Intl, VOR/DME OR TACAN RWY 24, Amdt 2
Fort Myers, FL, Southwest Florida Intl, NDB RWY 6, Amdt 5
Fort Myers, FL, Southwest Florida Intl, ILS RWY 6, Amdt 5
Fort Myers, FL, Southwest Florida Intl, RNAV (GPS) RWY 6, Orig
Fort Myers, FL, Southwest Florida Intl, RNAV (GPS) RWY 24, Orig
Fort Myers, FL, Southwest Florida Intl, GPS RWY 24, Orig, CANCELLED
Fort Myers, FL, Southwest Florida Intl, GPS RWY 6, Orig CANCELLED
Savannah, GA, Savannah Intl, RADAR–1, Amdt 9
Terre Haute, IN, Terre Haute Intl-Hulman Field, RADAR–1, Amdt 4
Newburyport, MA, Plum Island, VOR OR GPS RWY 10, Amdt 5, CANCELLED
Garden City, KS, Garden City Regional, VOR/DME RWY 12, Orig-A
Ardmore, OK, Ardmore Downtown Executive, VOR/DME RNAV RWY 17, Amdt 7
Columbia, SC, Columbia Metropolitan, RADAR–1, Amdt 10
Gallatin, TN, Sumner County Regional, NDB RWY 35, Amdt 1A, CANCELLED

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8940]

RIN 1545–AY73

Purchase Price Allocations in Deemed and Actual Asset Acquisitions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to deemed and actual asset acquisitions under sections 338 and 1060. The final regulations affect sellers and buyers of corporate stock that are eligible to elect to treat the transaction as a deemed asset acquisition. The final regulations also affect sellers and buyers of assets that constitute a trade or business.

DATES: *Effective Date:* These regulations are effective March 16, 2001.

Applicability Dates: For dates of applicability of these regulations, see §§ 1.338(i)–1 and 1.1060–1(a)(2).

FOR FURTHER INFORMATION CONTACT: Richard Starke of the Office of Associate Chief Counsel (Corporate), (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under the control number 1545–1658.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collections of information in these regulations are in §§ 1.338–2(d), 1.338–2(e)(4), 1.338–5(d)(3), 1.338–10(a)(4), 1.338(h)(10)–1(d)(2), and 1.1060–1(e)(ii)(A) and (B). The collections of information are necessary to make an election to treat a sale of stock as a sale of assets, to calculate and collect the appropriate amount of tax in a deemed or actual asset acquisition, and to determine the bases of assets acquired in a deemed or actual asset acquisition.

These collections of information are required to obtain a benefit. The likely respondents and/or recordkeepers are small businesses or organizations, businesses, or other for-profit institutions, and farms.

The regulations provide that a section 338 election is made by filing Form 8023. The burden for this requirement is reflected in the burden of Form 8023. The regulations also provide that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. The burden for this requirement is reflected in the burden of Form 8594. With respect to Form 8023, the IRS estimated that 201 forms would be filed each year and that each taxpayer would require 12.98 hours to comply. With respect to Form 8594, the IRS estimated that 20,000 forms would be filed each year and that each taxpayer would require 12.25 hours to comply. These estimates have been made available for public comment and no public comments have been received.

The burden for the collection of information in § 1.338–2(e)(4) is as follows:

Estimated total annual reporting/recordkeeping burden: 25 hours.

Estimated average annual burden per respondent/recordkeeper: 0.56 hours.

Estimated number of respondents/recordkeepers: 45.

Estimated annual frequency of responses: On occasion.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to 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.

Background

On August 10, 1999, the IRS and the Department of Treasury (Treasury) published a notice of proposed rulemaking in the **Federal Register** (REG–107069–97, 64 FR 43462 (1999–36 I.R.B. 346)) containing proposed regulations under sections 338 and 1060 of the Internal Revenue Code of 1986. On January 7, 2000, the IRS and Treasury published temporary regulations in the **Federal Register** (REG–107069–97, 65 FR 1236 (2000–4 I.R.B. 332)) that are virtually the same as the proposed regulations published on August 10, 1999. The preamble to the temporary regulations notes that the proposed regulations generally were favorably received and that the IRS and Treasury believe that the proposed regulations provided clearer guidance and better rules than the prior regulations under sections 338 and 1060. However, the preamble also notes that the comments received warranted further consideration.

Explanation of Provisions

In general, the final regulations adopted herein are very similar to the proposed and temporary regulations in their organization and substance. However, changes have been made in several areas, largely in response to the comments received. The principal changes are discussed below, in the order in which they appear in the regulations.

Insurance Transactions

Although section 338 treats a target as having sold all its assets in the deemed asset sale, proposed § 1.338–1(a)(2) provides that other rules of law may characterize the transaction as something other than or in addition to a sale and purchase of assets. Proposed § 1.338–1(a)(2) states: ''[f]or example, if target is an insurance company for which a section 338 election is made, the deemed asset sale would be characterized and taxed as an assumption-reinsurance transaction under applicable Federal income tax law.'' Several comments urged removal of the quoted sentence in the final regulations and recommended that the treatment of transactions involving insurance companies under section 338 be reserved pending more complete analysis and guidance. The IRS and Treasury believe that generally it is appropriate to view the deemed asset sale by an insurance company as involving an assumption-reinsurance transaction and, therefore, have retained the sentence in the final regulations. The IRS and Treasury, however, intend to provide additional guidance in a separate project.

Residual Method Anti-abuse Rule

The proposed regulations include a new anti-abuse rule intended to prevent taxpayers from changing the results of applying the residual method by engaging in transactions that have a transitory economic effect with respect to the ownership or use of assets. The anti-abuse rule is intended to apply only to an asset transfer exhibiting objective characteristics suggesting the transfer was engaged in to manipulate the operation of the residual method.

Notwithstanding the limited scope of the anti-abuse rule, several commentators suggested further limiting or eliminating the rule. After studying the comments, the IRS and Treasury continue to believe that the anti-abuse rule serves a useful purpose in protecting the operation of the residual method. Several changes have been made, however, to clarify the intended scope of the rule. Thus, the phrase ''to more than an insignificant extent'' is changed in the final regulation to ''primarily.'' This change is meant to clarify that some continuing use in its original location of an asset transferred to or from the target is permitted.

A comment requested that the final regulations elaborate further on the statement that the Commissioner has the authority to make appropriate correlative adjustments and that the final regulations include an example. The final regulations do not do so, because the nature of any correlative adjustments would depend on the particular factual circumstances in which the rule is applied. Thus, any additional guidance would provide only limited assistance. However, the final regulations state that correlative adjustments should avoid duplication or omission of any item of income, gain, loss, deduction, or basis. See § 1.338–1(c).

Closing Date Issues

Concerns have been raised about the possibility that buyers can effectuate transactions outside the ordinary course of business after acquiring target stock that, to the detriment of an unsuspecting seller, must be reported by the seller on its return, which normally covers the entire day on which the acquisition occurs. Some of these concerns derive from a reading of § 1.1502–76(b) to preclude operation of the ''next day rule'' whenever a section 338 election is made for a target. The ''next day rule'' of § 1.1502–76(b) provides that if, on the day of a group member's change in status as a member, a transaction occurs that is properly allocable to the portion of the member's day after the event resulting in the change, the member and all related persons must treat the transaction as occurring at the beginning of the following day.

Commentators have suggested that a purchaser acquiring stock of a subsidiary member of a consolidated group could, after acquiring the target stock, cause the target to sell all of its assets to another person later on the closing date and then make a unilateral section 338(g) election. It is suggested that the effect of the election is to preclude the operation of the next day rule, causing the results of the actual asset sale to fall onto the selling consolidated group's tax return. The IRS and Treasury do not believe that § 1.1502–76(b), as written, automatically precludes the operation of the next day rule in a section 338 context, but nevertheless have provided a new rule in these final regulations that requires the application of the next day rule in a section 338 context where the target engages in a transaction outside the ordinary course of business on the acquisition date after the event resulting in the qualified stock purchase (QSP). See § 1.338–1(d).

Purchase Definition

Proposed § 1.338–3(b)(2) provides rules concerning the definition of a ''purchase'' that require more than a nominal amount to be paid for the stock of the target. Several comments requested reconsideration of the proposed rule. Accordingly, in the temporary regulations, at § 1.338–3T(b)(2), a definition is given for the term *purchase of target affiliate*, while the definition of the term *purchase of target* is reserved. The final regulations include a single definition of *purchase* applicable to both targets and target affiliates, which definition generally conforms to the definition of *purchase of target affiliate* in the temporary regulations. Under this definition, stock in a target (or target affiliate) may be considered purchased if, under general principles of tax law, the purchasing corporation is considered to own stock of the target (or target affiliate) meeting the requirements of section 1504(a)(2), notwithstanding that no amount may be paid for (or allocated to) the stock.

Transactions After QSPs

Since 1995, the regulations under section 338 have provided special rules that apply, by virtue of section 338, to certain transfers of target assets following a QSP of the target's stock if a section 338 election is not made for the target. These provisions modify the normal operation of the continuity of interest requirement under section 368 and the interpretation of the term shareholder for purposes of section 368(a)(1)(D), as applied to certain taxpayers. These rules were adopted to effectuate Congressional intent, in replacing former section 334(b)(2) with section 338, that the deemed sale results provided by section 338 not be available through transactions within the purchasing group after the acquisition. In the final regulations, these rules are located at § 1.338–3(d).

The 1995 amendments did not provide any special rule to modify the application of the statutory requirements for reorganizations under section 368(a)(1)(C). However, the considerations that justify the modified application of the continuity of interest rule and the shareholder definition for ''D'' reorganizations also justify an analogous modification of the ''solely for voting stock'' requirement for post-acquisition ''C'' reorganizations. Accordingly, the final regulations provide that consideration other than voting stock issued in connection with a QSP is ignored in determining whether a subsequent transfer of assets by the target corporation to a member of its new affiliated group satisfies the solely for voting stock requirement of a ''C'' reorganization. See § 1.338–3(d)(4).

Treatment of Liabilities

The proposed regulations eliminate the prior distinction between ''modified aggregate deemed sale price'' (or MADSP) and ''aggregate deemed sale price'' (or ADSP), a distinction that appeared to have been based on the premise that the new target generally will not bear the tax liability for the deemed sale where a section 338(h)(10) election is made, but that it generally will bear the liability where a section 338 (but not section 338(h)(10)) election is made. However, these generalizations were not universally correct in either situation. Proposed §§ 1.338–4 and 1.338–5 clarify the treatment of taxes as liabilities in computing ADSP and ''adjusted grossed-up basis'' (or AGUB). Commentators asked for further clarification of the standards for taking certain taxes into account. Rather than providing more specific guidance, which would be inconsistent with the overall philosophy of deferring to general tax principles governing actual transactions, the final regulations further simplify the discussion of liabilities. Except for the fact that new target remains liable for old target's tax liabilities (see § 1.338–1(b)(3)(i)) and that a buyer's assumption of a seller's income tax liability with respect to the sale causes the consideration to ''gross up'' or ''pyramid,'' a tax liability is like any other type of liability and the status of any particular type of tax liability as a liability includible in ADSP or AGUB should be determined under general principles as applied to the facts relating to the incidence of the tax liability.

Valuation Rules

Proposed § 1.338–6(a)(2)(iii) retains a statement from prior versions of the regulations that ''[i]n certain cases the IRS may make an independent showing of the value of goodwill and going

concern value as a means of calling into question the validity of the taxpayer's valuation of other assets.'' This authority was intended to provide a means of ensuring that taxpayers do not overvalue assets in higher classes that are allocated consideration before the residual class. As a factual matter, the IRS and Treasury understand that a low (or no) allocation to goodwill and going concern value may result from causes other than a taxpayer's overvaluation of assets in higher classes. Moreover, the IRS and Treasury accept the soundness of the fundamental premise of the residual method that goodwill and going concern value are the most difficult assets to value independently and that their value should be computed as the residue after all other assets are valued. The final regulations delete the sentence about valuing goodwill and going concern value. Under the final regulations, the IRS retains the ability to challenge a taxpayer's valuation of assets in Classes I through VI, but will do so on grounds consistent with the residual method of allocation.

Top-Down Allocation

Changes to the rules for allocating purchase price to the stock and assets of lower tier subsidiaries were not proposed, although, as noted in the preamble to the proposed regulations, considerable study was given to alternative approaches. Comments were requested, but none was received, and the IRS and Treasury to date have been unable to develop a fully successful alternative. Accordingly, the final regulations continue to apply the ''top-down'' allocation system, under which the stock of a lower tier subsidiary is allocated purchase price in the general asset category (now Class V) and the deemed purchase price of its assets is in turn computed from that stock price and then allocated within the subsidiary.

In the final regulations, the scope of Class II assets described in § 1.338–6(b)(2)(ii) is modified to provide that Class II assets do not include stock of target affiliates, other than actively traded stock described in section 1504(a)(4) (certain preferred stock). Instead, stock of target affiliates is included in Class V. This would exclude target affiliate stock from Class II where the target holds an 80 percent or greater interest in the target affiliate but a minority interest in target affiliate stock of the same class is actively traded. It is not clear that the trading price for shares of a class of stock less than 20 percent of which is in the hands of the public, and which consequently may experience thinner trading volumes, necessarily is indicative of the fair market value of the 80 percent or greater majority interest.

Class III Assets

Proposed § 1.338–6(b)(2) provides that Class III assets consist of ''accounts receivable, mortgages, and credit card receivables from customers which arise in the ordinary course of business.'' Comments suggested that these categories were too limited. Under the rationales expressed in the preamble to the proposed regulations, the IRS and Treasury believe that other types of debt instruments, and even other types of assets, should be included in Class III. As revised in the final regulations, Class III assets generally consist of assets that the taxpayer marks to market at least annually and debt instruments (including receivables). However, debt instruments issued by related parties, and certain contingent payment and convertible debt instruments, are not included in Class III.

First Year Price Adjustments

Proposed § 1.338–7 provides rules for allocating the ADSP or AGUB when increases or decreases are required after the close of new target's first taxable year. For increases or decreases required before the end of new target's first taxable year, proposed § 1.338–4(b)(2)(ii) provides that ''[i]ncreases or decreases with respect to the elements of ADSP that are taken into account before the close of new target's first taxable year are taken into account for purposes of determining ADSP and the deemed sale tax consequences as if they had been taken into account at the beginning of the day after the acquisition date.'' Proposed § 1.338–5(b)(2)(ii) contains a similar rule for redeterminations of AGUB. These rules originated in predecessor versions of the regulations under section 338.

Although no commentator requested removal of these rules, one comment highlighted the difficulties posed for the seller in section 338(h)(10) transactions in applying a rule based on new target's year-end, and requested relief. After reviewing this comment, the final regulations remove the rules providing special treatment for changes in ADSP or AGUB occurring before the close of new target's first taxable year. Instead, the general rule in § 1.338–7 governs the allocation of all changes in ADSP or AGUB after the acquisition date. This change is consistent with the IRS's and Treasury's expressed intent in drafting the proposed regulations to eliminate, to the extent possible, any special accounting rules in the section 338 regulations, as it should result in treatment more consistent with that of an actual asset sale.

Like-kind Exchanges

A commentator suggested that the final regulations should apply section 1031 to old target in its deemed asset sale if the purchaser pays for target stock with property of like kind to old target's assets or with cash put in escrow for a successor to old target to designate for purchase of assets of like kind. This rule would be an exception to the requirement in § 1.338–1(a)(2) that the transaction between old target and new target must be a taxable transaction, and inconsistent with the requirement of section 338(a)(1) that target ''shall be treated as having sold all of its assets at the close of the acquisition date at fair market value * * *'' After considering the policy concerns and the administrative difficulties in creating and administering an exception for section 1031 exchanges, the IRS and Treasury have not adopted this suggestion.

S Corporations

A purchaser may agree to compensate the sellers of an S corporation target for adverse tax consequences resulting from a section 338(h)(10) election. When more than one shareholder in an S corporation sells stock in the same transaction, the different shareholders may negotiate different prices for their stock based on varying Federal and state tax liabilities they will bear as a result of the transaction. Some commentators have noted that, in other cases, different prices may be paid for control premiums or other reasons. Under section 1361(b)(1)(D), an S corporation is permitted to have only one class of stock. A potential second class of stock issue arises because the fiction of a section 338(h)(10) election is that the target sells its assets to a new target and then liquidates. Applying that fiction, if the shareholders are treated as receiving differing amounts per share in the deemed liquidation, a second class of stock could result.

Some commentators have recommended that the final regulations clarify that the payment of varying amounts per share to S corporation shareholders will not cause the S corporation to violate the single class of stock requirement. The final regulations respond to these comments by including a statement in § 1.1361–1(l)(2)(v) that the payment of varying amounts to S corporation shareholders in a transaction for which a section 338(h)(10) election is made will not cause the S corporation to violate the single class of stock requirement of

section 1361(b)(1)(D) and § 1.1361–1(l), provided that the varying amounts are negotiated in arm's length negotiations with the purchaser.

One commentator requested clarification regarding the calculation and allocation of the purchaser's AGUB for a target that was an S corporation that owned a qualified subchapter S subsidiary (QSub), where the QSub status does not continue after the acquisition date and the QSub is treated as becoming a separate subsidiary of new target. Although the regulations require allocation of the AGUB among the target's assets held at the beginning of the day after the acquisition date, they also require results consistent with those that would occur if the parties had actually engaged in the transactions deemed to occur because of section 338(h)(10), and taking into account other transactions that actually occurred or are deemed to occur. See § 1.338(h)(10)–1(d)(9). An actual sale of the assets of the S corporation target, including the stock of the QSub, to a corporation would be treated as a sale by the S corporation of all of its assets, including those of the QSub. If the QSub status does not continue after the acquisition, the buyer would be treated as forming a new subsidiary containing the assets held by the former QSub. See § 1.1361–5(b)(3) *Example 9.* Accordingly, the AGUB for the former S corporation target would be allocated among the assets of the former QSub as though they were assets of the target, and then the target would be treated as having formed a new subsidiary containing the assets of the former QSub.

Clarification was also requested regarding the possibility of making a section 338(h)(10) election for the sale by an S corporation of stock of a QSub. As noted above, *Example 9* of § 1.1361–5(b)(3) indicates that the sale by an S corporation of all of the stock of a QSub is treated as an asset sale by the S corporation to the purchaser of the QSub stock. No further guidance is provided in these regulations. The sale of an 80 percent or greater (but less than 100 percent) interest in the stock of a QSub is not expected to be a common transaction because it generally will result in a taxable transaction with respect to all the assets of the QSub.

Forms 8023 and 8594

The current temporary regulations provide that a section 338(h)(10) election for an S corporation target must be made jointly by the purchaser and the S corporation shareholders. These regulations specifically require nonselling S corporation shareholders to consent to the election. See § 1.338(h)(10)–1T(c)(2). However, the instructions for the election form (Form 8023) do not clearly require the nonselling shareholders to sign the election form. Moreover, the prior regulations were less clear in requiring nonselling S corporation shareholders to consent to the election. Commentators have requested that the IRS recognize the validity of section 338(h)(10) elections for S corporation targets even if not signed by nonselling shareholders. The IRS will revise Form 8023 to make clear that nonselling S corporation shareholders must also sign. The IRS will recognize the validity of otherwise valid elections made on the current version of the form even if not signed by the nonselling shareholders, provided that the S corporation and all of its shareholders (including nonselling shareholders) report the tax consequences consistently with the results under section 338(h)(10). See § 1.338(i)–1(b).

The preamble to the proposed regulations indicates that the IRS and Treasury were considering requiring that the information about the allocation of ADSP and AGUB currently submitted on the election form (Form 8023) instead be submitted by the purchaser and seller(s) separately on their income tax returns. Such a change will be effectuated when Form 8023 is revised. The information about ADSP and AGUB will be reported by each party separately on Form 8594, which also will be revised. With respect to a transaction subject to a section 338 election, Form 8594 will be filed with the income tax returns of the old and new target for the tax periods including the deemed sale and purchase. Where an election under section 338(g) is made for a controlled foreign corporation (CFC), the purchaser and seller (or their U.S. shareholder(s)) will be required to submit separately, on Form 8594, information about ADSP and AGUB. The Form 8594 will be required to be attached to the last Form 5471 filed by the seller for old target, and to the first Form 5471 filed by the purchaser for new target.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has been determined that a final regulatory flexibility analysis is required for the collection of information in this Treasury decision under 5 U.S.C. 604. This analysis is set forth below under the heading ''Final Regulatory Flexibility Act Analysis.'' Pursuant to section 7805(f) of the Internal Revenue Code, these final regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Final Regulatory Flexibility Act Analysis

This analysis is required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). This regulatory action is intended to simplify and clarify the current rules relating to both deemed and actual asset acquisitions. The current rules were developed over a long period of time and have been repeatedly amended. The IRS and Treasury believe these final regulations will significantly improve the clarity of the rules relating to both deemed and actual asset acquisitions.

The major objective of these final regulations is to modify the rules for allocating purchase price in both deemed and actual asset acquisitions. In addition, these final regulations replace the general rules for electing to treat a stock sale as an asset sale.

These collections of information may affect small businesses if the stock of a corporation which is a small entity is acquired in a qualified stock purchase or if a trade or business which is also a small business is transferred in a taxable transaction. Form 8023 (on which an election to treat a stock sale as an asset sale is filed) has been submitted to and approved by the Office of Management and Budget. With respect to Form 8023, the IRS estimated that 201 forms would be filed each year and that each taxpayer would require 12.98 hours to comply. Form 8594 (on which a sale or acquisition of assets constituting a trade or business is reported) has also been submitted to and approved by the Office of Management and Budget. With respect to Form 8594, the IRS estimated that 20,000 forms would be filed each year and that each taxpayer would require 12.25 hours to comply. These estimates have been made available for public comment and no public comments have been received. The regulations do not impose new requirements on small businesses and, in fact, should lessen any difficulties associated with the existing reporting requirements by clarifying the rules associated with deemed and actual asset acquisitions.

The collections of information require taxpayers to file an election in order to treat a stock sale as an asset sale. In addition, taxpayers must file a statement regarding the amount of consideration allocated to each class of assets under

the residual method. The professional skills that would be necessary to make the election or allocate the consideration would be the same as those required to prepare a return for the small business.

Drafting Information

The principal author of these regulations is Richard Starke, Office of the Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated extensively in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for Sections 1.338–6T, 1.338–7T, 1.338–10T and 1.1060–1T and by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * * Section 1.338–6 also issued under 26 U.S.C. 337(d), 338, and 1502. Section 1.338–7 also issued under 26 U.S.C. 337(d), 338, and 1502., Section 1.338–10 also issued under 26 U.S.C. 337(d), 338, and 1502.* * * Section 1.1060–1 also issued under 26 U.S.C. 1060.* * *

Par. 2. In the list below, for each section indicated in the left column, remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.56(g)–1(k)(1), second sentence	of § 1.338–6T(b), if otherwise	of § 1.338–6(b), if otherwise
1.56(g)–1(k)(1), last sentence	of § 1.338–6T(c)(1) and (2) also	of § 1.338–6(c)(1) and (2) also
1.197–2(e)(1), second sentence	See § 1.1060–1T(b)(2)	See § 1.1060–1(b)(2)
1.197–2(k), *Example 6*, paragraph (i), last sentence.	See § 1.338–6T(b)	See § 1.338–6(b)
1.197–2(k), *Example 6*, paragraph (ii), second sentence.	Under §§ 1.1060–1T(c)(2) and 1.338–6T(c)(1)	Under §§ 1.1060–1(c)(2) and 1.338–6(c)(1)
1.197–2(k), *Example 6*, paragraph (ii), last sentence.	See §§ 1.1060–1T(c)(2) and 1.338–6T(b)	See §§ 1.1060–1(c)(2) and 1.338–6(b)
1.197–2(k), *Example 23*, paragraph (iv), first sentence.	(as these terms are defined as in defined in § 1.338–1(c)(13))	(as these terms are defined as in defined in § 1.338–2(c)(17))
1.338–8(h)(1), last sentence	nomenclature of § 1.338–1(b) and (c) and	nomenclature of sentence § 1.338–2(b) and (c) and
1.338–9(a), penultimate sentence	provided in § 1.338–1(c)(14),	provided in § 1.338–2(c)(18),
1.338–9(b)(1), first sentence	the deemed sale gain, as defined in § 1.338–3(b)(4),	the deemed sale tax sentence consequences, as defined in § 1.338–2(c)(7),
1.338–9(b)(1), last sentence	the deemed sale gain	the deemed sale tax consequences.
1.338–9(b)(3)(i)(B)	under § 1.338(b)–1(e)(2)	under § 1.338–5(d).
1.338–9(b)(3)(ii)	reflect deemed sale gain)	reflect deemed sale tax consequences)
1.338–9(b)(4)	under § 1.338(b)–1(e)(2),	under § 1.338–5(d),
1.338–9(f)(2), *Example 1*, paragraph (a), last sentence.	and § 1.338(b)–1(e)(2)	and § 1.338–5(d).
1.368–1(a), third sentence	(k) and 1.338–3T(c)(3)	(k) and 1.338–3(d).
1.368–1(e)(6), *Example 4*, paragraph (ii), last sentence.	see § 1.338–3T(c)(3) (which	see § 1.338–3(d) (which
1.597–2(d)(5)(iii)(B)	(see § 1.338–7T)	(see § 1.338–7)
1.597–5(c)(3)(i)	under § 1.338–6T(b), (c)(1) and (2)	under § 1.338–6(b), (c)(1) and (2).
1.597–5(d)(2)(i)	under § 1.338–6T(b), (c)(1) and (2)	under § 1.338–6(b), (c)(1) and (2).
1.921–1T(b)(1), A–1, immediately proceding the penultimate sentence.	and § 1.338–2T(d)	and § 1.338–2(d)
1.1031(d)–1T, last sentence	see § 1.1060–1T(b), (c), and (d) *Example 1*	see § 1.1060–1(b), (c), and (d) *Example 1*.
1.1031(j)–1(b)(2)(iii), penultimate sentence	in § 1.338–6T(b), to which reference is made by § 1.1060–1T(c)(2)	in § 1.338–6(b), to which reference is made by § 1.1060–1(c)(2).
1.1361–4(d), *Example 3*, third sentence	Under section 338(a) and § 1.338(h)(10)–1T(d)(3),	Under section 338(a) and § 1.338(h)(10)–1(d)(3),
1.1502–75(k)	See § 1.338(h)(10)–1T(d)(7) for	See § 1.338(h)(10)–1(d)(7) for
1.1502–76(b)(1)(ii)(A)(*1*), last sentence	See § 1.338–10T(a)(5) (deemed	See § 1.338–10(a)(5) (deemed

Par. 3. Sections 1.338–0 through 1.338–7 are added to read as follows:

§ 1.338–0 Outline of topics.

This section lists the captions contained in the regulations under section 338 as follows:

§ 1.338–1 General principles; status of old target and new target.

(a) In general.
(1) Deemed transaction.
(2) Application of other rules of law.
(3) Overview.
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§ 1.338(i)–1 Effective dates.

§ 1.338–1 General principles; status of old target and new target.

(a) *In general*—(1) *Deemed transaction.* Elections are available under section 338 when a purchasing corporation acquires the stock of another corporation (the target) in a qualified stock purchase. One type of election, under section 338(g), is available to the purchasing corporation. Another type of election, under section 338(h)(10), is, in more limited circumstances, available jointly to the purchasing corporation and the sellers of the stock. (Rules concerning eligibility for these elections are contained in §§ 1.338–2, 1.338–3, and 1.338(h)(10)–1.) Although target is a single corporation under corporate law, if a section 338 election is made, then two separate corporations, old target and new target, generally are considered to exist for purposes of subtitle A of the Internal Revenue Code. Old target is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the discharge of its liabilities (see § 1.1001–2(a)), and new target is treated as acquiring all of its assets from an unrelated person in exchange for consideration that includes the assumption of those liabilities. (Such transaction is, without regard to its characterization for Federal income tax purposes, referred to as the deemed asset sale and the income tax

consequences thereof as the deemed sale tax consequences.) If a section 338(h)(10) election is made, old target is deemed to liquidate following the deemed asset sale.

(2) *Application of other rules of law.* Other rules of law apply to determine the tax consequences to the parties as if they had actually engaged in the transactions deemed to occur under section 338 and the regulations thereunder except to the extent otherwise provided in those regulations. See also § 1.338–6(c)(2). Other rules of law may characterize the transaction as something other than or in addition to a sale and purchase of assets; however, the transaction between old and new target must be a taxable transaction. For example, if target is an insurance company for which a section 338 election is made, the deemed asset sale would be characterized and taxed as an assumption-reinsurance transaction under applicable Federal income tax law. See § 1.817–4(d).

(3) *Overview.* Definitions and special nomenclature and rules for making the section 338 election are provided in § 1.338–2. Qualification for the section 338 election is addressed in § 1.338–3. The amount for which old target is treated as selling all of its assets (the aggregate deemed sale price, or ADSP) is addressed in § 1.338–4. The amount for which new target is deemed to have purchased all its assets (the adjusted grossed-up basis, or AGUB) is addressed in § 1.338–5. Section 1.338–6 addresses allocation both of ADSP among the assets old target is deemed to have sold and of AGUB among the assets new target is deemed to have purchased. Section 1.338–7 addresses allocation of ADSP or AGUB when those amounts subsequently change. Asset and stock consistency are addressed in § 1.338–8. International aspects of section 338 are covered in § 1.338–9. Rules for the filing of returns are provided in § 1.338–10. Eligibility for and treatment of section 338(h)(10) elections is addressed in § 1.338(h)(10)–1.

(b) *Treatment of target under other provisions of the Internal Revenue Code*—(1) *General rule for subtitle A.* Except as provided in this section, new target is treated as a new corporation that is unrelated to old target for purposes of subtitle A of the Internal Revenue Code. Thus—

(i) New target is not considered related to old target for purposes of section 168 and may make new elections under section 168 without taking into account the elections made by old target; and

(ii) New target may adopt, without obtaining prior approval from the Commissioner, any taxable year that meets the requirements of section 441 and any method of accounting that meets the requirements of section 446. Notwithstanding § 1.441–1T(b)(2), a new target may adopt a taxable year on or before the last day for making the election under section 338 by filing its first return for the desired taxable year on or before that date.

(2) *Exceptions for subtitle A.* New target and old target are treated as the same corporation for purposes of—

(i) The rules applicable to employee benefit plans (including those plans described in sections 79, 104, 105, 106, 125, 127, 129, 132, 137, and 220), qualified pension, profit-sharing, stock bonus and annuity plans (sections 401(a) and 403(a)), simplified employee pensions (section 408(k)), tax qualified stock option plans (sections 422 and 423), welfare benefit funds (sections 419, 419A, 512(a)(3), and 4976), and voluntary employee benefit associations (section 501(c)(9) and the regulations thereunder);

(ii) Sections 1311 through 1314 (relating to the mitigation of the effect of limitations), if a section 338(h)(10) election is not made for target;

(iii) Section 108(e)(5) (relating to the reduction of purchase money debt);

(iv) Section 45A (relating to the Indian Employment Credit), section 51 (relating to the Work Opportunity Credit), section 51A (relating to the Welfare to Work Credit), and section 1396 (relating to the Empowerment Zone Act);

(v) Sections 401(h) and 420 (relating to medical benefits for retirees);

(vi) Section 414 (relating to definitions and special rules); and

(vii) Any other provision designated in the Internal Revenue Bulletin by the Internal Revenue Service. See § 601.601(d)(2)(ii) of this chapter. See, for example, § 1.1001–3(e)(4)(i)(F) providing that an election under section 338 does not result in the substitution of a new obligor on target's debt.

(3) *General rule for other provisions of the Internal Revenue Code.* Except as provided in the regulations under section 338 or in the Internal Revenue Bulletin by the Internal Revenue Service (see § 601.601(d)(2)(ii) of this chapter), new target is treated as a continuation of old target for purposes other than subtitle A of the Internal Revenue Code. For example—

(i) New target is liable for old target's Federal income tax liabilities, including the tax liability for the deemed sale tax consequences and those tax liabilities of the other members of any consolidated group that included old target that are attributable to taxable years in which those corporations and old target joined in the same consolidated return (see § 1.1502–6(a));

(ii) Wages earned by the employees of old target are considered wages earned by such employees from new target for purposes of sections 3101 and 3111 (Federal Insurance Contributions Act) and section 3301 (Federal Unemployment Tax Act); and

(iii) Old target and new target must use the same employer identification number.

(c) *Anti-abuse rule*—(1) *In general.* The rules of this paragraph (c) apply for purposes of applying the residual method as provided for under the regulations under sections 338 and 1060. The Commissioner is authorized to treat any property (including cash) transferred by old target in connection with the transactions resulting in the application of the residual method (and not held by target at the close of the acquisition date) as, nonetheless, property of target at the close of the acquisition date if the property so transferred is, within 24 months after the deemed asset sale, owned by new target, or is owned, directly or indirectly, by a member of the affiliated group of which new target is a member and continues after the acquisition date to be held or used primarily in connection with one or more of the activities of new target. In addition, the Commissioner is authorized to treat any property (including cash) transferred to old target in connection with the transactions resulting in the application of the residual method (and held by target at the close of the acquisition date) as, nonetheless, not being property of target at the close of the acquisition date if the property so transferred is, within 24 months after the deemed asset sale, not owned by new target but owned, directly or indirectly, by a member of the affiliated group of which new target is a member, or owned by new target but held or used primarily in connection with an activity conducted, directly or indirectly, by another member of the affiliated group of which new target is a member in combination with other property retained by or acquired, directly or indirectly, from the transferor of the property (or a member of the same affiliated group) to old target. For purposes of this paragraph (c)(1), an interest in an entity is considered held or used in connection with an activity if property of the entity is so held or used. The authority of the Commissioner under this paragraph (c)(1) includes the making of any appropriate correlative adjustments (avoiding, to the extent possible, the

duplication or omission of any item of income, gain, loss, deduction, or basis).

(2) *Examples.* The following examples illustrate this paragraph (c):

Example 1. Prior to a qualified stock purchase under section 338, target transfers one of its assets to a related party. The purchasing corporation then purchases the target stock and also purchases the transferred asset from the related party. After its purchase of target, the purchasing corporation and target are members of the same affiliated group. A section 338 election is made. Under an arrangement with the purchaser, the separately transferred asset is used primarily in connection with target's activities. Applying the anti-abuse rule of this paragraph (c), the Commissioner may consider target to own the transferred asset for purposes of applying the residual method under section 338.

Example 2. T owns all the stock of T1. T1 leases intellectual property to T, which T uses in connection with its own activities. P, a purchasing corporation, wishes to buy the T–T1 chain of corporations. P, in connection with its planned purchase of the T stock, contracts to consummate a purchase of all the stock of T1 on March 1 and of all the stock of T on March 2. Section 338 elections are thereafter made for both T and T1. Immediately after the purchases, P, T and T1 are members of the same affiliated group. T continues to lease the intellectual property from T1 and that is the primary use of the intellectual property. Thus, an asset of T, the T1 stock, was removed from T's own assets prior to the qualified stock purchase of the T stock, T1's own assets are used after the deemed asset sale in connection with T's own activities, and the T1 stock is after the deemed asset sale owned by P, a member of the same affiliated group of which T is a member. Applying the anti-abuse rule of this paragraph (c), the Commissioner may, for purposes of application of the residual method under section 338 both to T and to T1, consider P to have bought only the stock of T, with T at the time of the qualified stock purchases of both T and T1 (the qualified stock purchase of T1 being triggered by the deemed sale under section 338 of T's assets) owning T1. The Commissioner accordingly would allocate consideration to T's assets as though the T1 stock were one of those assets, and then allocate consideration within T1 based on the amount allocated to the T1 stock at the T level.

(d) *Next day rule for post-closing transactions.* If a target corporation for which an election under section 338 is made engages in a transaction outside the ordinary course of business on the acquisition date after the event resulting in the qualified stock purchase of the target or a higher tier corporation, the target and all persons related thereto (either before or after the qualified stock purchase) under section 267(b) or section 707 must treat the transaction for all Federal income tax purposes as occurring at the beginning of the day following the transaction and after the deemed purchase by new target.

§ 1.338–2 Nomenclature and definitions; mechanics of the section 338 election.

(a) *Scope.* This section prescribes rules relating to elections under section 338.

(b) *Nomenclature.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) T is a domestic target corporation that has only one class of stock outstanding. Old T refers to T for periods ending on or before the close of T's acquisition date; new T refers to T for subsequent periods.

(2) P is the purchasing corporation.

(3) The P group is an affiliated group of which P is a member.

(4) P1, P2, etc., are domestic corporations that are members of the P group.

(5) T1, T2, etc., are domestic corporations that are target affiliates of T. These corporations (T1, T2, etc.) have only one class of stock outstanding and may also be targets.

(6) S is a domestic corporation (unrelated to P and B) that owns T prior to the purchase of T by P. (S is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by a domestic corporation.)

(7) A, a U.S. citizen or resident, is an individual (unrelated to P and B) who owns T prior to the purchase of T by P. (A is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by an individual who is a U.S. citizen or resident. Ownership of T by A and ownership of T by S are mutually exclusive circumstances.)

(8) B, a U.S. citizen or resident, is an individual (unrelated to T, S, and A) who owns the stock of P.

(9) F, used as a prefix with the other terms in this paragraph (b), connotes foreign, rather than domestic, status. For example, FT is a foreign corporation (as defined in section 7701(a)(5)) and FA is an individual other than a U.S. citizen or resident.

(10) CFC, used as a prefix with the other terms in this paragraph (b) referring to a corporation, connotes a controlled foreign corporation (as defined in section 957, taking into account section 953(c)). A corporation identified with the prefix F may be a controlled foreign corporation. (The prefix CFC is used when the corporation's status as a controlled foreign corporation is significant.)

(c) *Definitions.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) *Acquisition date.* The term *acquisition date* has the same meaning as in section 338(h)(2).

(2) *Acquisition date assets. Acquisition date assets* are the assets of the target held at the beginning of the day after the acquisition date (but see § 1.338–1(d) (regarding certain transactions on the acquisition date)).

(3) *Affiliated group.* The term *affiliated group* has the same meaning as in section 338(h)(5). Corporations are affiliated on any day they are members of the same affiliated group.

(4) *Common parent.* The term *common parent* has the same meaning as in section 1504.

(5) *Consistency period.* The *consistency period* is the period described in section 338(h)(4)(A) unless extended pursuant to § 1.338–8(j)(1).

(6) *Deemed asset sale.* The *deemed asset sale* is the transaction described in § 1.338–1(a)(1) that is deemed to occur for purposes of subtitle A of the Internal Revenue Code if a section 338 election is made.

(7) *Deemed sale tax consequences. Deemed sale tax consequences* refers to, in the aggregate, the Federal income tax consequences (generally, the income, gain, deduction, and loss) of the deemed asset sale. Deemed sale tax consequences also refers to the Federal income tax consequences of the transfer of a particular asset in the deemed asset sale.

(8) *Deemed sale return.* The *deemed sale return* is the return on which target's deemed sale tax consequences are reported that does not include any other items of target. Target files a deemed sale return when a section 338 election (but not a section 338(h)(10) election) is filed for target and target is a member of a selling group (defined in paragraph (c)(16) of this section) that files a consolidated return for the period that includes the acquisition date. See § 1.338–10. If target is an S corporation for the period that ends on the day before the acquisition date and a section 338 election (but not a section 338(h)(10) election) is filed for target, see § 1.338–10(a)(3).

(9) *Domestic corporation.* A *domestic corporation* is a corporation—

(i) That is domestic within the meaning of section 7701(a)(4) or that is treated as domestic for purposes of subtitle A of the Internal Revenue Code (e.g., to which an election under section 953(d) or 1504(d) applies); and

(ii) That is not a DISC, a corporation described in section 1248(e), or a corporation to which an election under section 936 applies.

(10) *Old target's final return. Old target's final return* is the income tax return of old target for the taxable year ending at the close of the acquisition date that includes the deemed sale tax

consequences. However, if a deemed sale return is filed for old target, the deemed sale return is considered old target's final return.

(11) *Purchasing corporation.* The term *purchasing corporation* has the same meaning as in section 338(d)(1). The purchasing corporation may also be referred to as purchaser. Unless otherwise provided, any reference to the purchasing corporation is a reference to all members of the affiliated group of which the purchasing corporation is a member. See sections 338(h)(5) and (8). Also, unless otherwise provided, any reference to the purchasing corporation is, with respect to a deemed purchase of stock under section 338(a)(2), a reference to new target with respect to its own deemed purchase of stock in another target.

(12) *Qualified stock purchase.* The term *qualified stock purchase* has the same meaning as in section 338(d)(3).

(13) *Related persons.* Two persons are related if stock in a corporation owned by one of the persons would be attributed under section 318(a) (other than section 318(a)(4)) to the other.

(14) *Section 338 election.* A *section 338 election* is an election to apply section 338(a) to target. A section 338 election is made by filing a statement of section 338 election pursuant to paragraph (d) of this section. The form on which this statement is filed is referred to in the regulations under section 338 as the Form 8023, ''Elections Under Section 338 For Corporations Making Qualified Stock Purchases.''

(15) *Section 338(h)(10) election.* A *section 338(h)(10) election* is an election to apply section 338(h)(10) to target. A section 338(h)(10) election is made by making a joint election for target under § 1.338(h)(10)–1 on Form 8023.

(16) *Selling group.* The *selling group* is the affiliated group (as defined in section 1504) eligible to file a consolidated return that includes target for the taxable period in which the acquisition date occurs. However, a selling group is not an affiliated group of which target is the common parent on the acquisition date.

(17) *Target; old target; new target. Target* is the target corporation as defined in section 338(d)(2). *Old target* refers to target for periods ending on or before the close of target's acquisition date. *New target* refers to target for subsequent periods.

(18) *Target affiliate.* The term *target affiliate* has the same meaning as in section 338(h)(6) (applied without section 338(h)(6)(B)(i)). Thus, a corporation described in section 338(h)(6)(B)(i) is considered a target affiliate for all purposes of section 338. If a target affiliate is acquired in a qualified stock purchase, it is also a target.

(19) *12-month acquisition period.* The *12-month acquisition period* is the period described in section 338(h)(1), unless extended pursuant to § 1.338–8(j)(2).

(d) *Time and manner of making election.* The purchasing corporation makes a section 338 election for target by filing a statement of section 338 election on Form 8023 in accordance with the instructions to the form. The section 338 election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs. A section 338 election is irrevocable. See § 1.338(h)(10)–1(c)(2) for section 338(h)(10) elections.

(e) *Special rules for foreign corporations or DISCs*—(1) *Elections by certain foreign purchasing corporations*—(i) *General rule.* A qualifying foreign purchasing corporation is not required to file a statement of section 338 election for a qualifying foreign target before the earlier of 3 years after the acquisition date and the 180th day after the close of the purchasing corporation's taxable year within which a triggering event occurs.

(ii) *Qualifying foreign purchasing corporation.* A purchasing corporation is a *qualifying foreign purchasing corporation* only if, during the acquisition period of a qualifying foreign target, all the corporations in the purchasing corporation's affiliated group are foreign corporations that are not subject to United States tax.

(iii) *Qualifying foreign target.* A target is a *qualifying foreign target* only if target and its target affiliates are foreign corporations that, during target's acquisition period, are not subject to United States tax (and will not become subject to United States tax during such period because of a section 338 election). A target affiliate is taken into account for purposes of the preceding sentence only if, during target's 12-month acquisition period, it is or becomes a member of the affiliated group that includes the purchasing corporation.

(iv) *Triggering event.* A *triggering event* occurs in the taxable year of the qualifying foreign purchasing corporation in which either that corporation or any corporation in its affiliated group becomes subject to United States tax.

(v) *Subject to United States tax.* For purposes of this paragraph (e)(1), a foreign corporation is considered subject to United States tax—

(A) For the taxable year for which that corporation is required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(B)(*2*)) to file a United States income tax return; or

(B) For the period during which that corporation is a controlled foreign corporation, a passive foreign investment company for which an election under section 1295 is in effect, a foreign investment company, or a foreign corporation the stock ownership of which is described in section 552(a)(2).

(2) *Acquisition period.* For purposes of this paragraph (e), the term *acquisition period* means the period beginning on the first day of the 12-month acquisition period and ending on the acquisition date.

(3) *Statement of section 338 election may be filed by United States shareholders in certain cases.* The United States shareholders (as defined in section 951(b)) of a foreign purchasing corporation that is a controlled foreign corporation (as defined in section 957 (taking into account section 953(c))) may file a statement of section 338 election on behalf of the purchasing corporation if the purchasing corporation is not required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(B)(*2*)) to file a United States income tax return for its taxable year that includes the acquisition date. Form 8023 must be filed as described in the form and its instructions and also must be attached to the Form 5471, ''Information Returns Of U.S. Persons With Respect To Certain Foreign Corporations,'' filed with respect to the purchasing corporation by each United States shareholder for the purchasing corporation's taxable year that includes the acquisition date (or, if paragraph (e)(1)(i) of this section applies to the election, for the purchasing corporation's taxable year within which it becomes a controlled foreign corporation). The provisions of § 1.964–1(c) (including § 1.964–1(c)(7)) do not apply to an election made by the United States shareholders.

(4) *Notice requirement for U.S. persons holding stock in foreign target*—(i) *General rule.* If a target subject to a section 338 election was a controlled foreign corporation, a passive foreign investment company, or a foreign personal holding company at any time during the portion of its taxable year that ends on its acquisition date, the purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to—

(A) Each U.S. person (other than a member of the affiliated group of which the purchasing corporation is a member (the purchasing group member)) that, on the acquisition date of the foreign target, holds stock in the foreign target; and

(B) Each U.S. person (other than a purchasing group member) that sells stock in the foreign target to a purchasing group member during the foreign target's 12-month acquisition period.

(ii) *Limitation.* The notice requirement of this paragraph (e)(4) applies only where the section 338 election for the foreign target affects income, gain, loss, deduction, or credit of the U.S. person described in paragraph (e)(4)(i) of this section under section 551, 951, 1248, or 1293.

(iii) *Form of notice.* The notice to U.S. persons must be identified prominently as a notice of section 338 election and must—

(A) Contain the name, address, and employer identification number (if any) of, and the country (and, if relevant, the lesser political subdivision) under the laws of which are organized the purchasing corporation and the relevant target (i.e., the target the stock of which the particular U.S. person held or sold under the circumstances described in paragraph (e)(4)(i) of this section);

(B) Identify those corporations as the purchasing corporation and the foreign target, respectively; and

(C) Contain the following declaration (or a substantially similar declaration):

THIS DOCUMENT SERVES AS NOTICE OF AN ELECTION UNDER SECTION 338 FOR THE ABOVE CITED FOREIGN TARGET THE STOCK OF WHICH YOU EITHER HELD OR SOLD UNDER THE CIRCUMSTANCES DESCRIBED IN TREASURY REGULATIONS SECTION 1.338–2(e)(4). FOR POSSIBLE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES UNDER SECTION 551, 951, 1248, OR 1293 OF THE INTERNAL REVENUE CODE OF 1986 THAT MAY APPLY TO YOU, SEE TREASURY REGULATIONS SECTION 1.338–9(b). YOU MAY BE REQUIRED TO ATTACH THE INFORMATION ATTACHED TO THIS NOTICE TO CERTAIN RETURNS.

(iv) *Timing of notice.* The notice required by this paragraph (e)(4) must be delivered to the U.S. person on or before the later of the 120th day after the acquisition date of the particular target or the day on which Form 8023 is filed. The notice is considered delivered on the date it is mailed to the proper address (or an address similar enough to complete delivery), unless the date it is mailed cannot be reasonably determined. The date of mailing will be determined under the rules of section 7502. For example, the date of mailing is the date of U.S. postmark or the applicable date recorded or marked by a designated delivery service.

(v) *Consequence of failure to comply.* A statement of section 338 election is not valid if timely notice is not given to one or more U.S. persons described in this paragraph (e)(4). If the form of notice fails to comply with all requirements of this paragraph (e)(4), the section 338 election is valid, but the waiver rule of § 1.338–10(b)(1) does not apply.

(vi) *Good faith effort to comply.* The purchasing corporation will be considered to have complied with this paragraph (e)(4), even though it failed to provide notice or provide timely notice to each person described in this paragraph (e)(4), if the Commissioner determines that the purchasing corporation made a good faith effort to identify and provide timely notice to those U.S. persons.

§ 1.338–3 Qualification for the section 338 election.

(a) *Scope.* This section provides rules on whether certain acquisitions of stock are qualified stock purchases and on other miscellaneous issues under section 338.

(b) *Rules relating to qualified stock purchases*—(1) *Purchasing corporation requirement.* An individual cannot make a qualified stock purchase of target. Section 338(d)(3) requires, as a condition of a qualified stock purchase, that a corporation purchase the stock of target. If an individual forms a corporation (new P) to acquire target stock, new P can make a qualified stock purchase of target if new P is considered for tax purposes to purchase the target stock. Facts that may indicate that new P does not purchase the target stock include new P's merging downstream into target, liquidating, or otherwise disposing of the purported qualified stock purchase.

(2) *Purchase.* The term *purchase* has the same meaning as in section 338(h)(3). Stock in a target (or target affiliate) may be considered purchased if, under general principles of tax law, the purchasing corporation is considered to own stock of the target (or target affiliate) meeting the requirements of section 1504(a)(2), notwithstanding that no amount may be paid for (or allocated to) the stock.

(3) *Acquisitions of stock from related corporations*—(i) *In general.* Stock acquired by a purchasing corporation from a related corporation (R) is generally not considered acquired by purchase. See section 338(h)(3)(A)(iii).

(ii) *Time for testing relationship.* For purposes of section 338(h)(3)(A)(iii), a purchasing corporation is treated as related to another person if the relationship specified in section 338(h)(3)(A)(iii) exists—

(A) In the case of a single transaction, immediately after the purchase of target stock;

(B) In the case of a series of acquisitions otherwise constituting a qualified stock purchase within the meaning of section 338(d)(3), immediately after the last acquisition in such series; and

(C) In the case of a series of transactions effected pursuant to an integrated plan to dispose of target stock, immediately after the last transaction in such series.

(iii) *Cases where section 338(h)(3)(C) applies—acquisitions treated as purchases.* If section 338(h)(3)(C) applies and the purchasing corporation is treated as acquiring stock by purchase from R, solely for purposes of determining when the stock is considered acquired, target stock acquired from R is considered to have been acquired by the purchasing corporation on the day on which the purchasing corporation is first considered to own that stock under section 318(a) (other than section 318(a)(4)).

(iv) *Examples.* The following examples illustrate this paragraph (b)(3):

Example 1. (i) S is the parent of a group of corporations that are engaged in various businesses. Prior to January 1, Year 1, S decided to discontinue its involvement in one line of business. To accomplish this, S forms a new corporation, Newco, with a nominal amount of cash. Shortly thereafter, on January 1, Year 1, S transfers all the stock of the subsidiary conducting the unwanted business (T) to Newco in exchange for 100 shares of Newco common stock and a Newco promissory note. Prior to January 1, Year 1, S and Underwriter (U) had entered into a binding agreement pursuant to which U would purchase 60 shares of Newco common stock from S and then sell those shares in an Initial Public Offering (IPO). On January 6, Year 1, the IPO closes.

(ii) Newco's acquisition of T stock is one of a series of transactions undertaken pursuant to one integrated plan. The series of transactions ends with the closing of the IPO and the transfer of all the shares of stock in accordance with the agreements. Immediately after the last transaction effected pursuant to the plan, S owns 40 percent of Newco, which does not give rise to a relationship described in section 338(h)(3)(A)(iii). See § 1.338–2(b)(3)(ii)(C). Accordingly, S and Newco are not related for purposes of section 338(h)(3)(A)(iii).

(iii) Further, because Newco's basis in the T stock is not determined by reference to S's basis in the T stock and because the transaction is not an exchange to which section 351, 354, 355, or 356 applies, Newco's acquisition of the T stock is a

purchase within the meaning of section 338(h)(3).

Example 2. (i) On January 1 of Year 1, P purchases 75 percent in value of the R stock. On that date, R owns 4 of the 100 shares of T stock. On June 1 of Year 1, R acquires an additional 16 shares of T stock. On December 1 of Year 1, P purchases 70 shares of T stock from an unrelated person and 12 of the 20 shares of T stock held by R.

(ii) Of the 12 shares of T stock purchased by P from R on December 1 of Year 1, 3 of those shares are deemed to have been acquired by P on January 1 of Year 1, the date on which 3 of the 4 shares of T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., $4 \times .75$). The remaining 9 shares of T stock purchased by P from R on December 1 of Year 1 are deemed to have been acquired by P on June 1 of Year 1, the date on which an additional 12 of the 20 shares of T stock owned by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., $(20 \times .75) - 3$). Because stock acquisitions by P sufficient for a qualified stock purchase of T occur within a 12-month period (i.e., 3 shares constructively on January 1 of Year 1, 9 shares constructively on June 1 of Year 1, and 70 shares actually on December 1 of Year 1), a qualified stock purchase is made on December 1 of Year 1.

Example 3. (i) On February 1 of Year 1, P acquires 25 percent in value of the R stock from B (the sole shareholder of P). That R stock is not acquired by purchase. See section 338(h)(3)(A)(iii). On that date, R owns 4 of the 100 shares of T stock. On June 1 of Year 1, P purchases an additional 25 percent in value of the R stock, and on January 1 of Year 2, P purchases another 25 percent in value of the R stock. On June 1 of Year 2, R acquires an additional 16 shares of the T stock. On December 1 of Year 2, P purchases 68 shares of the T stock from an unrelated person and 12 of the 20 shares of the T stock held by R.

(ii) Of the 12 shares of the T stock purchased by P from R on December 1 of Year 2, 2 of those shares are deemed to have been acquired by P on June 1 of Year 1, the date on which 2 of the 4 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., $4 \times .5$). For purposes of this attribution, the R stock need not be acquired by P by purchase. See section 338(h)(1). (By contrast, the acquisition of the T stock by P from R does not qualify as a purchase unless P has acquired at least 50 percent in value of the R stock by purchase. Section 338(h)(3)(C)(i).) Of the remaining 10 shares of the T stock purchased by P from R on December 1 of Year 2, 1 of those shares is deemed to have been acquired by P on January 1 of Year 2, the date on which an additional 1 share of the 4 shares of the T stock held by R on that date was first considered owned by P under section 318(a)(2)(C) (i.e., $(4 \times .75) - 2$). The remaining 9 shares of the T stock purchased by P from R on December 1 of Year 2, are deemed to have been acquired by P on June 1 of Year 2, the date on which an additional 12 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (i.e., $(20 \times .75) - 3$). Because a qualified stock purchase of T by P is made on December 1 of Year 2 only if all 12 shares of the T stock purchased by P from R on that date are considered acquired during a 12-month period ending on that date (so that, in conjunction with the 68 shares of the T stock P purchased on that date from the unrelated person, 80 of T's 100 shares are acquired by P during a 12-month period) and because 2 of those 12 shares are considered to have been acquired by P more than 12 months before December 1 of Year 2 (i.e., on June 1 of Year 1), a qualified stock purchase is not made. (Under § 1.338–8(j)(2), for purposes of applying the consistency rules, P is treated as making a qualified stock purchase of T if, pursuant to an arrangement, P purchases T stock satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.)

Example 4. Assume the same facts as in *Example 3,* except that on February 1 of Year 1, P acquires 25 percent in value of the R stock by purchase. The result is the same as in *Example 3.*

(4) *Acquisition date for tiered targets*—(i) *Stock sold in deemed asset sale.* If an election under section 338 is made for target, old target is deemed to sell target's assets and new target is deemed to acquire those assets. Under section 338(h)(3)(B), new target's deemed purchase of stock of another corporation is a purchase for purposes of section 338(d)(3) on the acquisition date of target. If new target's deemed purchase causes a qualified stock purchase of the other corporation and if a section 338 election is made for the other corporation, the acquisition date for the other corporation is the same as the acquisition date of target. However, the deemed sale and purchase of the other corporation's assets is considered to take place after the deemed sale and purchase of target's assets.

(ii) *Example.* The following example illustrates this paragraph (b)(4):

Example. A owns all of the T stock. T owns 50 of the 100 shares of X stock. The other 50 shares of X stock are owned by corporation Y, which is unrelated to A, T, or P. On January 1 of Year 1, P makes a qualified stock purchase of T from A and makes a section 338 election for T. On December 1 of Year 1, P purchases the 50 shares of X stock held by Y. A qualified stock purchase of X is made on December 1 of Year 1, because the deemed purchase of 50 shares of X stock by new T because of the section 338 election for T and the actual purchase of 50 shares of X stock by P are treated as purchases made by one corporation. Section 338(h)(8). For purposes of determining whether those purchases occur within a 12-month acquisition period as required by section 338(d)(3), T is deemed to purchase its X stock on T's acquisition date, i.e., January 1 of Year 1.

(5) *Effect of redemptions*—(i) *General rule.* Except as provided in this paragraph (b)(5), a qualified stock purchase is made on the first day on which the percentage ownership requirements of section 338(d)(3) are satisfied by reference to target stock that is both—

(A) Held on that day by the purchasing corporation; and

(B) Purchased by the purchasing corporation during the 12-month period ending on that day.

(ii) *Redemptions from persons unrelated to the purchasing corporation.* Target stock redemptions from persons unrelated to the purchasing corporation that occur during the 12-month acquisition period are taken into account as reductions in target's outstanding stock for purposes of determining whether target stock purchased by the purchasing corporation in the 12-month acquisition period satisfies the percentage ownership requirements of section 338(d)(3).

(iii) *Redemptions from the purchasing corporation or related persons during 12-month acquisition period*—(A) *General rule.* For purposes of the percentage ownership requirements of section 338(d)(3), a redemption of target stock during the 12-month acquisition period from the purchasing corporation or from any person related to the purchasing corporation is not taken into account as a reduction in target's outstanding stock.

(B) *Exception for certain redemptions from related corporations.* A redemption of target stock during the 12-month acquisition period from a corporation related to the purchasing corporation is taken into account as a reduction in target's outstanding stock to the extent that the redeemed stock would have been considered purchased by the purchasing corporation (because of section 338(h)(3)(C)) during the 12-month acquisition period if the redeemed stock had been acquired by the purchasing corporation from the related corporation on the day of the redemption. See paragraph (b)(3) of this section.

(iv) *Examples.* The following examples illustrate this paragraph (b)(5):

Example 1. QSP on stock purchase date; redemption from unrelated person during 12-month period. A owns all 100 shares of T stock. On January 1 of Year 1, P purchases 40 shares of the T stock from A. On July 1 of Year 1, T redeems 25 shares from A. On December 1 of Year 1, P purchases 20 shares of the T stock from A. P makes a qualified stock purchase of T on December 1 of Year 1, because the 60 shares of T stock purchased by P within the 12-month period ending on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 2. QSP on stock redemption date; redemption from unrelated person during 12-month period. The facts are the same as in *Example 1,* except that P purchases 60 shares of T stock on January 1 of Year 1 and none on December 1 of Year 1. P makes a qualified stock purchase of T on July 1 of Year 1, because that is the first day on which the T stock purchased by P within the preceding 12-month period satisfies the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 3. Redemption from purchasing corporation not taken into account. On December 15 of Year 1, T redeems 30 percent of its stock from P. The redeemed stock was held by P for several years and constituted P's total interest in T. On December 1 of Year 2, P purchases the remaining T stock from A. P does not make a qualified stock purchase of T on December 1 of Year 2. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of P's T stock on December 15 of Year 1 is not taken into account as a reduction in T's outstanding stock.

Example 4. Redemption from related person taken into account. On January 1 of Year 1, P purchases 60 of the 100 shares of X stock. On that date, X owns 40 of the 100 shares of T stock. On April 1 of Year 1, T redeems X's T stock and P purchases the remaining 60 shares of T stock from an unrelated person. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of the T stock from X (a person related to P) is taken into account as a reduction in T's outstanding stock. If P had purchased the 40 redeemed shares from X on April 1 of Year 1, all 40 of the shares would have been considered purchased (because of section 338(h)(3)(C)(i)) during the 12-month period ending on April 1 of Year 1 (24 of the 40 shares would have been considered purchased by P on January 1 of Year 1 and the remaining 16 shares would have been considered purchased by P on April 1 of Year 1). See paragraph (b)(3) of this section. Accordingly, P makes a qualified stock purchase of T on April 1 of Year 1, because the 60 shares of T stock purchased by P on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (i.e., 60/60 shares), determined by taking into account the redemption of 40 shares.

(c) *Effect of post-acquisition events on eligibility for section 338 election*—(1) *Post-acquisition elimination of target.* (i) The purchasing corporation may make an election under section 338 for target even though target is liquidated on or after the acquisition date. If target liquidates on the acquisition date, the liquidation is considered to occur on the following day and immediately after new target's deemed purchase of assets. The purchasing corporation may also make an election under section 338 for target even though target is merged into another corporation, or otherwise disposed of by the purchasing corporation provided that, under the facts and circumstances, the purchasing corporation is considered for tax purposes as the purchaser of the target stock.

(ii) The following examples illustrate this paragraph (c)(1):

Example 1. On January 1 of Year 1, P purchases 100 percent of the outstanding common stock of T. On June 1 of Year 1, P sells the T stock to an unrelated person. Assuming that P is considered for tax purposes as the purchaser of the T stock, P remains eligible, after June 1 of Year 1, to make a section 338 election for T that results in a deemed asset sale of T's assets on January 1 of Year 1.

Example 2. On January 1 of Year 1, P makes a qualified stock purchase of T. On that date, T owns the stock of T1. On March 1 of Year 1, T sells the T1 stock to an unrelated person. On April 1 of Year 1, P makes a section 338 election for T. Notwithstanding that the T1 stock was sold on March 1 of Year 1, the section 338 election for T on April 1 of Year 1 results in a qualified stock purchase by T of T1 on January 1 of Year 1. See paragraph (b)(4)(i) of this section.

(2) *Post-acquisition elimination of the purchasing corporation.* An election under section 338 may be made for target after the acquisition of assets of the purchasing corporation by another corporation in a transaction described in section 381(a), provided that the purchasing corporation is considered for tax purposes as the purchaser of the target stock. The acquiring corporation in the section 381(a) transaction may make an election under section 338 for target.

(d) *Consequences of post-acquisition elimination of target where section 338 election not made*—(1) *Scope.* The rules of this paragraph (d) apply to the transfer of target assets to the purchasing corporation (or another member of the same affiliated group as the purchasing corporation) (the transferee) following a qualified stock purchase of target stock, if the purchasing corporation does not make a section 338 election for target. Notwithstanding the rules of this paragraph (d), section 354(a) (and so much of section 356 as relates to section 354) cannot apply to any person other than the purchasing corporation or another member of the same affiliated group as the purchasing corporation unless the transfer of target assets is pursuant to a reorganization as determined without regard to this paragraph (d).

(2) *Continuity of interest.* By virtue of section 338, in determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied on the transfer of assets from target to the transferee, the purchasing corporation's target stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of the target's business enterprise prior to the transfer that can be continued in a reorganization.

(3) *Control requirement.* By virtue of section 338, the acquisition of target stock in the qualified stock purchase will not prevent the purchasing corporation from qualifying as a shareholder of the target transferor for the purpose of determining whether, immediately after the transfer of target assets, a shareholder of the transferor is in control of the corporation to which the assets are transferred within the meaning of section 368(a)(1)(D).

(4) *Solely for voting stock requirement.* By virtue of section 338, the acquisition of target stock in the qualified stock purchase for consideration other than voting stock will not prevent the subsequent transfer of target assets from satisfying the solely for voting stock requirement for purposes of determining if the transfer of target assets qualifies as a reorganization under section 368(a)(1)(C).

(5) *Example.* The following example illustrates this paragraph (d):

Example. (i) *Facts.* P, T, and X are domestic corporations. T and X each operate a trade or business. A and K, individuals unrelated to P, own 85 and 15 percent, respectively, of the stock of T. P owns all of the stock of X. The total adjusted basis of T's property exceeds the sum of T's liabilities plus the amount of liabilities to which T's property is subject. P purchases all of A's T stock for cash in a qualified stock purchase. P does not make an election under section 338(g) with respect to its acquisition of T stock. Shortly after the acquisition date, and as part of the same plan, T merges under applicable state law into X in a transaction that, but for the question of continuity of interest, satisfies all the requirements of section 368(a)(1)(A). In the merger, all of T's assets are transferred to X. P and K receive X stock in exchange for their T stock. P intends to retain the stock of X indefinitely.

(ii) *Status of transfer as a reorganization.* By virtue of section 338, for the purpose of determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied, P's T stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of T's business enterprise prior to the transfer that can be continued in a reorganization through P's continuing ownership of X. Thus, the continuity of interest requirement is satisfied and the merger of T into X is a reorganization within the meaning of section 368(a)(1)(A). Moreover, by virtue of section 338, the requirement of section 368(a)(1)(D) that a target shareholder control the transferee immediately after the transfer is satisfied because P controls X immediately after the transfer. In addition, all of T's assets are transferred to X in the merger and P and K

receive the X stock exchanged therefor in pursuance of the plan of reorganization. Thus, the merger of T into X is also a reorganization within the meaning of section 368(a)(1)(D).

(iii) *Treatment of T and X.* Under section 361(a), T recognizes no gain or loss in the merger. Under section 362(b), X's basis in the assets received in the merger is the same as the basis of the assets in T's hands. X succeeds to and takes into account the items of T as provided in section 381.

(iv) *Treatment of P.* By virtue of section 338, the transfer of T assets to X is a reorganization. Pursuant to that reorganization, P exchanges its T stock solely for stock of X, a party to the reorganization. Because P is the purchasing corporation, section 354 applies to P's exchange of T stock for X stock in the merger of T into X. Thus, P recognizes no gain or loss on the exchange. Under section 358, P's basis in the X stock received in the exchange is the same as the basis of P's T stock exchanged therefor.

(v) *Treatment of K.* Because K is not the purchasing corporation (or an affiliate thereof), section 354 cannot apply to K's exchange of T stock for X stock in the merger of T into X unless the transfer of T's assets is pursuant to a reorganization as determined without regard to this paragraph (d). Under general principles of tax law applicable to reorganizations, the continuity of interest requirement is not satisfied because P's stock purchase and the merger of T into X are pursuant to an integrated transaction in which A, the owner of 85 percent of the stock of T, received solely cash in exchange for A's T stock. See, e.g., § 1.368–1(e)(1)(i); *Yoc Heating* v. *Commissioner,* 61 T.C. 168 (1973); *Kass* v. *Commissioner,* 60 T.C. 218 (1973), aff'd, 491 F.2d 749 (3d Cir. 1974). Thus, the requisite continuity of interest under § 1.368–1(b) is lacking and section 354 does not apply to K's exchange of T stock for X stock. K recognizes gain or loss, if any, pursuant to section 1001(c) with respect to its T stock.

§ 1.338–4 Aggregate deemed sale price; various aspects of taxation of the deemed asset sale.

(a) *Scope.* This section provides rules under section 338(a)(1) to determine the aggregate deemed sale price (ADSP) for target. ADSP is the amount for which old target is deemed to have sold all of its assets in the deemed asset sale. ADSP is allocated among target's assets in accordance with § 1.338–6 to determine the amount for which each asset is deemed to have been sold. When a subsequent increase or decrease is required under general principles of tax law with respect to an element of ADSP, the redetermined ADSP is allocated among target's assets in accordance with § 1.338–7. This § 1.338–4 also provides rules regarding the recognition of gain or loss on the deemed sale of target affiliate stock. Notwithstanding section 338(h)(6)(B)(ii), stock held by a target affiliate in a foreign corporation or in a corporation that is a DISC or that is described in section 1248(e) is not excluded from the operation of section 338.

(b) *Determination of ADSP*—(1) *General rule.* ADSP is the sum of—

(i) The grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock (as defined in section 338(b)(6)(A)); and

(ii) The liabilities of old target.

(2) *Time and amount of ADSP*—(i) *Original determination.* ADSP is initially determined at the beginning of the day after the acquisition date of target. General principles of tax law apply in determining the timing and amount of the elements of ADSP.

(ii) *Redetermination of ADSP.* ADSP is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, for the elements of ADSP. For example, ADSP is redetermined because of an increase or decrease in the amount realized for recently purchased stock or because liabilities not originally taken into account in determining ADSP are subsequently taken into account. Increases or decreases with respect to the elements of ADSP result in the reallocation of ADSP among target's assets under § 1.338–7.

(iii) *Example.* The following example illustrates this paragraph (b)(2):

Example. In Year 1, T, a manufacturer, purchases a customized delivery truck from X with purchase money indebtedness having a stated principal amount of $100,000. P acquires all of the stock of T in Year 3 for $700,000 and makes a section 338 election for T. Assume T has no liabilities other than its purchase money indebtedness to X. In Year 4, when T is neither insolvent nor in a title 11 case, T and X agree to reduce the amount of the purchase money indebtedness to $80,000. Assume further that the reduction would be a purchase price reduction under section 108(e)(5). T and X's agreement to reduce the amount of the purchase money indebtedness would not, under general principles of tax law that would apply if the deemed asset sale had actually occurred, change the amount of liabilities of old target taken into account in determining its amount realized. Accordingly, ADSP is not redetermined at the time of the reduction. See § 1.338–5(b)(2)(iii) *Example 1* for the effect on AGUB.

(c) *Grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock*—(1) *Determination of amount.* The grossed-up amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock is an amount equal to—

(i) The amount realized on the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock determined as if the selling shareholder(s) were required to use old target's accounting methods and characteristics and the installment method were not available and determined without regard to the selling costs taken into account under paragraph (c)(1)(iii) of this section;

(ii) Divided by the percentage of target stock (by value, determined on the acquisition date) attributable to that recently purchased target stock;

(iii) Less the selling costs incurred by the selling shareholders in connection with the sale to the purchasing corporation of the purchasing corporation's recently purchased target stock that reduce their amount realized on the sale of the stock (e.g., brokerage commissions and any similar costs to sell the stock).

(2) *Example.* The following example illustrates this paragraph (c):

Example. T has two classes of stock outstanding, voting common stock and preferred stock described in section 1504(a)(4). On March 1 of Year 1, P purchases 40 percent of the outstanding T stock from S1 for $500, 20 percent of the outstanding T stock from S2 for $225, and 20 percent of the outstanding T stock from S3 for $275. On that date, the fair market value of all the T voting common stock is $1,250 and the preferred stock $750. S1, S2, and S3 incur $40, $35, and $25 respectively of selling costs. S1 continues to own the remaining 20 percent of the outstanding T stock. The grossed-up amount realized on the sale to P of P's recently purchased T stock is calculated as follows: The total amount realized (without regard to selling costs) is $1,000 (500 + 225 + 275). The percentage of T stock by value on the acquisition date attributable to the recently purchased T stock is 50% (1,000/(1,250 + 750)). The selling costs are $100 (40 + 35 + 25). The grossed-up amount realized is $1,900 (1,000/.5 − 100).

(d) *Liabilities of old target*—(1) *In general.* In general, the liabilities of old target are measured as of the beginning of the day after the acquisition date. (But see § 1.338–1(d) (regarding certain transactions on the acquisition date).) In order to be taken into account in ADSP, a liability must be a liability of target that is properly taken into account in amount realized under general principles of tax law that would apply if old target had sold its assets to an unrelated person for consideration that included the discharge of its liabilities. See § 1.1001–2(a). Such liabilities may include liabilities for the tax consequences resulting from the deemed sale.

(2) *Time and amount of liabilities.* The time for taking into account liabilities of old target in determining

ADSP and the amount of the liabilities taken into account is determined as if old target had sold its assets to an unrelated person for consideration that included the discharge of the liabilities by the unrelated person. For example, if no amount of a target liability is properly taken into account in amount realized as of the beginning of the day after the acquisition date, the liability is not initially taken into account in determining ADSP (although it may be taken into account at some later date).

(e) *Deemed sale tax consequences.* Gain or loss on each asset in the deemed sale is computed by reference to the ADSP allocated to that asset. ADSP is allocated under the rules of § 1.338–6. Though deemed sale tax consequences may increase or decrease ADSP by creating or reducing a tax liability, the amount of the tax liability itself may be a function of the size of the deemed sale tax consequences. Thus, these determinations may require trial and error computations.

(f) *Other rules apply in determining ADSP.* ADSP may not be applied in such a way as to contravene other applicable rules. For example, a capital loss cannot be applied to reduce ordinary income in calculating the tax liability on the deemed sale for purposes of determining ADSP.

(g) *Examples.* The following examples illustrate this section. For purposes of the examples in this paragraph (g), unless otherwise stated, T is a calendar year taxpayer that files separate returns and that has no loss, tax credit, or other carryovers to Year 1. Depreciation for Year 1 is not taken into account. T has no liabilities other than the Federal income tax liability resulting from the deemed asset sale, and the T shareholders have no selling costs. Assume that T's tax rate for any ordinary income or net capital gain resulting from the deemed sale of assets is 34 percent and that any capital loss is offset by capital gain. On July 1 of Year 1, P purchases all of the stock of T and makes a section 338 election for T. The examples are as follows:

Example 1. One class. (i) On July 1 of Year 1, T's only asset is an item of section 1245 property with an adjusted basis to T of $50,400, a recomputed basis of $80,000, and a fair market value of $100,000. P purchases all of the T stock for $75,000, which also equals the amount realized for the stock determined as if the selling shareholder(s) were required to use old target's accounting methods and characteristics.

(ii) ADSP is determined as follows (for purposes of this section (g), G is the grossed-up amount realized on the sale to P of P's recently purchased T stock, L is T's liabilities other than T's tax liability for the deemed sale tax consequences, T_R is the applicable tax rate, and B is the adjusted basis of the asset deemed sold):

$ADSP = G + L + T_R$ " $(ADSP - B)$

$ADSP = (\$75{,}000/1) + \$0 + .34 \times (ADSP - \$50{,}400)$

$ADSP = \$75{,}000 + .34ADSP - \$17{,}136$

$.66ADSP = \$57{,}864$

$ADSP = \$87{,}672.72$

(iii) Because ADSP for T ($87,672.72) does not exceed the fair market value of T's asset ($100,000), a Class V asset, T's entire ADSP is allocated to that asset. Thus, T's deemed sale results in $37,272.72 of taxable income (consisting of $29,600 of ordinary income and $7,672.72 of capital gain).

(iv) The facts are the same as in paragraph (i) of this *Example 1,* except that on July 1 of Year 1, P purchases only 80 of the 100 shares of T stock for $60,000. The grossed-up amount realized on the sale to P of P's recently purchased T stock (G) is $75,000 ($60,000/.8). Consequently, ADSP and the deemed sale tax consequences are the same as in paragraphs (ii) and (iii) of this *Example 1.*

(v) The facts are the same as in paragraph (i) of this *Example 1,* except that T also has goodwill (a Class VII asset) with an appraised value of $10,000. The results are the same as in paragraphs (ii) and (iii) of this *Example 1.* Because ADSP does not exceed the fair market value of the Class V asset, no amount is allocated to the Class VII asset (goodwill).

Example 2. More than one class. (i) P purchases all of the T stock for $140,000, which also equals the amount realized for the stock determined as if the selling shareholder(s) were required to use old target's accounting methods and characteristics. On July 1 of Year 1, T has liabilities (not including the tax liability for the deemed sale tax consequences) of $50,000, cash (a Class I asset) of $10,000, actively traded securities (a Class II asset) with a basis of $4,000 and a fair market value of $10,000, goodwill (a Class VII asset) with a basis of $3,000, and the following Class V assets:

Asset	*Basis*	*FMV*	*Ratio of asset FMV to total Class V FMV*
Land	$5,000	$35,000	.14
Building	10,000	50,000	.20
Equipment A (Recomputed basis $80,000)	5,000	90,000	.36
Equipment B (Recomputed basis $20,000)	10,000	75,000	.30
Totals	$30,000	$250,000	1.00

(ii) ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities. The amount allocated to an asset (other than a Class VII asset) cannot exceed its fair market value (however, the fair market value of any property subject to nonrecourse indebtedness is treated as being not less than the amount of such indebtedness; see § 1.338–6(a)(2)). See § 1.338–6(c)(1) (relating to fair market value limitation).

(iii) The portion of ADSP allocable to the Class V assets is preliminarily determined as follows (in the formula, the amount allocated to the Class I assets is referred to as I and the amount allocated to the Class II assets as II):

$ADSP_V = (G - (I + II)) + L + T_R \times [(II - B_{II}) + (ADSP_V - B_V)]$

$ADSP_V = (\$140{,}000 - (\$10{,}000 + \$10{,}000)) + \$50{,}000 + .34 \times [(\$10{,}000 - \$4{,}000) + (ADSP_V - (\$5{,}000 + \$10{,}000 + \$5{,}000 + \$10{,}000))]$

$ADSP_V = \$161{,}840 + .34ADSP_V$

$.66\ ADSP_V = \$161{,}840$

$ADSP_V = \$245{,}212.12$

(iv) Because, under the preliminary calculations of ADSP, the amount to be allocated to the Class I, II, III, IV, V, and VI assets does not exceed their aggregate fair market value, no ADSP amount is allocated to goodwill. Accordingly, the deemed sale of the goodwill results in a capital loss of $3,000. The portion of ADSP allocable to the Class V assets is finally determined by taking into account this loss as follows:

$ADSP_V = (G - (I + II)) + L + T_R \times [(II - B_{II}) + (ADSP_V - B_V) + (ADSP_{VII} - B_{VII})]$

$ADSP_V = (\$140{,}000 - (\$10{,}000 + \$10{,}000)) + \$50{,}000 + .34 \times [(\$10{,}000 - \$4{,}000) + (ADSP_V - \$30{,}000) + (\$0 - \$3{,}000)]$

$ADSP_V = \$160{,}820 + .34ADSP_V$

$.66\ ADSP_V = \$160{,}820$

$ADSP_V = \$243{,}666.67$

(v) The allocation of $ADSP_V$ among the Class V assets is in proportion to their fair market values, as follows:

Asset	*ADSP*	*Gain*
Land	$34,113.33	$29,113.33 (capital gain).
Building	48,733.34	38,733.34 (capital gain).
Equipment A	87,720.00	82,720.00 (75,000 ordinary income 7,720 capital gain).
Equipment B	73,100.00	63,100.00 (10,000 ordinary income 53,100 capital gain).
Totals	243,666.67	213,666.67.

Example 3. More than one class. (i) The facts are the same as in *Example 2,* except that P purchases the T stock for $150,000, rather than $140,000. The amount realized for the stock determined as if the selling shareholder(s) were required to use old target's accounting methods and characteristics is also $150,000.

(ii) As in *Example 2,* ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities.

(iii) The portion of ADSP allocable to the Class V assets as preliminarily determined under the formula set forth in paragraph (iii) of *Example 2* is $260,363.64. The amount allocated to the Class V assets cannot exceed their aggregate fair market value ($250,000). Thus, preliminarily, the ADSP amount allocated to Class V assets is $250,000.

(iv) Based on the preliminary allocation, the ADSP is determined as follows (in the formula, the amount allocated to the Class I assets is referred to as I, the amount allocated to the Class II assets as II, and the amount allocated to the Class V assets as V):

$ADSP = G + L + T_R \times [(II - B_{II}) + (V - B_V) + (ADSP - (I + II + V + B_{VII}))]$

$ADSP = \$150,000 + \$50,000 + .34 \times [(\$10,000 - \$4,000) + (\$250,000 - \$30,000) + (ADSP - (\$10,000 + \$10,000 + \$250,000 + \$3,000))]$

$ADSP = \$200,000 + .34ADSP - \$15,980$

$.66ADSP = \$184,020$

$ADSP = \$278,818.18$

(v) Because ADSP as determined exceeds the aggregate fair market value of the Class I, II, III, IV, V, and VI assets, the $250,000 amount preliminarily allocated to the Class V assets is appropriate. Thus, the amount of ADSP allocated to Class V assets equals their aggregate fair market value ($250,000), and the allocated ADSP amount for each Class V asset is its fair market value. Further, because there are no Class VI assets, the allocable ADSP amount for the Class VII asset (goodwill) is $8,818.18 (the excess of ADSP over the aggregate ADSP amounts for the Class I, II, III, IV, V and VI assets).

Example 4. Amount allocated to T1 stock. (i) The facts are the same as in *Example 2,* except that T owns all of the T1 stock (instead of the building), and T1's only asset is the building. The T1 stock and the building each have a fair market value of $50,000, and the building has a basis of $10,000. A section 338 election is made for T1 (as well as T), and T1 has no liabilities other than the tax liability for the deemed sale tax consequences. T is the common parent of a consolidated group filing a final consolidated return described in § 1.338–10(a)(1).

(ii) ADSP exceeds $20,000. Thus, $10,000 of ADSP is allocated to the cash and $10,000 to the actively traded securities.

(iii) Because T does not recognize any gain on the deemed sale of the T1 stock under paragraph (h)(2) of this section, appropriate adjustments must be made to reflect accurately the fair market value of the T and T1 assets in determining the allocation of ADSP among T's Class V assets (including the T1 stock). In preliminarily calculating $ADSP_V$ in this case, the T1 stock can be disregarded and, because T owns all of the T1 stock, the T1 asset can be treated as a T asset. Under this assumption, $ADSP_V$ is $243,666.67. See paragraph (iv) of *Example 2.*

(iv) Because the portion of the preliminary ADSP allocable to Class V assets ($243,666.67) does not exceed their fair market value ($250,000), no amount is allocated to Class VII assets for T. Further, this amount ($243,666.67) is allocated among T's Class V assets in proportion to their fair market values. See paragraph (v) of *Example 2.* Tentatively, $48,733.34 of this amount is allocated to the T1 stock.

(v) The amount tentatively allocated to the T1 stock, however, reflects the tax incurred on the deemed sale of the T1 asset equal to $13,169.34 ($.34\times(\$48,733.34 - \$10,000)$). Thus, the ADSP allocable to the Class V assets of T, and the ADSP allocable to the T1 stock, as preliminarily calculated, each must be reduced by $13,169.34. Consequently, these amounts, respectively, are $230,497.33 and $35,564.00. In determining ADSP for T1, the grossed-up amount realized on the deemed sale to new T of new T's recently purchased T1 stock is $35,564.00.

(vi) The facts are the same as in paragraph (i) of this *Example 4,* except that the T1 building has a $12,500 basis and a $62,500 value, all of the outstanding T1 stock has a $62,500 value, and T owns 80 percent of the T1 stock. In preliminarily calculating $ADSP_V$, the T1 stock can be disregarded but, because T owns only 80 percent of the T1 stock, only 80 percent of T1 asset basis and value should be taken into account in calculating T's ADSP. By taking into account 80 percent of these amounts, the remaining calculations and results are the same as in paragraphs (ii), (iii), (iv), and (v) of this *Example 4,* except that the grossed-up amount realized on the sale of the recently purchased T1 stock is $44,455.00 ($35,564.00/0.8).

(h) *Deemed sale of target affiliate stock*—(1) *Scope.* This paragraph (h) prescribes rules relating to the treatment of gain or loss realized on the deemed sale of stock of a target affiliate when a section 338 election (but not a section 338(h)(10) election) is made for the target affiliate. For purposes of this paragraph (h), the definition of domestic corporation in § 1.338–2(c)(9) is applied without the exclusion therein for DISCs, corporations described in section 1248(e), and corporations to which an election under section 936 applies.

(2) *In general.* Except as otherwise provided in this paragraph (h), if a section 338 election is made for target, target recognizes no gain or loss on the deemed sale of stock of a target affiliate having the same acquisition date and for which a section 338 election is made if—

(i) Target directly owns stock in the target affiliate satisfying the requirements of section 1504(a)(2);

(ii) Target and the target affiliate are members of a consolidated group filing a final consolidated return described in § 1.338–10(a)(1); or

(iii) Target and the target affiliate file a combined return under § 1.338–10(a)(4).

(3) *Deemed sale of foreign target affiliate by a domestic target.* A domestic target recognizes gain or loss on the deemed sale of stock of a foreign target affiliate. For the proper treatment of such gain or loss, see, e.g., sections 1246, 1248, 1291 *et seq.*, and 338(h)(16) and § 1.338–9.

(4) *Deemed sale producing effectively connected income.* A foreign target recognizes gain or loss on the deemed sale of stock of a foreign target affiliate to the extent that such gain or loss is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(5) *Deemed sale of insurance company target affiliate electing under section 953(d).* A domestic target recognizes gain (but not loss) on the deemed sale of stock of a target affiliate that has in effect an election under section 953(d) in an amount equal to the lesser of the gain realized or the earnings and profits described in section 953(d)(4)(B).

(6) *Deemed sale of DISC target affiliate.* A foreign or domestic target recognizes gain (but not loss) on the deemed sale of stock of a target affiliate that is a DISC or a former DISC (as defined in section 992(a)) in an amount equal to the lesser of the gain realized or the amount of accumulated DISC income determined with respect to such stock under section 995(c). Such gain is

included in gross income as a dividend as provided in sections 995(c)(2) and 996(g).

(7) *Anti-stuffing rule.* If an asset the adjusted basis of which exceeds its fair market value is contributed or transferred to a target affiliate as transferred basis property (within the meaning of section 7701(a)(43)) and a purpose of such transaction is to reduce the gain (or increase the loss) recognized on the deemed sale of such target affiliate's stock, the gain or loss recognized by target on the deemed sale of stock of the target affiliate is determined as if such asset had not been contributed or transferred.

(8) *Examples.* The following examples illustrate this paragraph (h):

Example 1. (i) P makes a qualified stock purchase of T and makes a section 338 election for T. T's sole asset, all of the T1 stock, has a basis of $50 and a fair market value of $150. T's deemed purchase of the T1 stock results in a qualified stock purchase of T1 and a section 338 election is made for T1. T1's assets have a basis of $50 and a fair market value of $150.

(ii) T realizes $100 of gain on the deemed sale of the T1 stock, but the gain is not recognized because T directly owns stock in T1 satisfying the requirements of section 1504(a)(2) and a section 338 election is made for T1.

(iii) T1 recognizes gain of $100 on the deemed sale of its assets.

Example 2. The facts are the same as in *Example 1,* except that P does not make a section 338 election for T1. Because a section 338 election is not made for T1, the $100 gain realized by T on the deemed sale of the T1 stock is recognized.

Example 3. (i) P makes a qualified stock purchase of T and makes a section 338 election for T. T owns all of the stock of T1 and T2. T's deemed purchase of the T1 and T2 stock results in a qualified stock purchase of T1 and T2 and section 338 elections are made for T1 and T2. T1 and T2 each own 50 percent of the vote and value of T3 stock. The deemed purchases by T1 and T2 of the T3 stock result in a qualified stock purchase of T3 and a section 338 election is made for T3. T is the common parent of a consolidated group and all of the deemed asset sales are reported on the T group's final consolidated return. See § 1.338–10(a)(1).

(ii) Because T, T1, T2 and T3 are members of a consolidated group filing a final consolidated return, no gain or loss is recognized by T, T1 or T2 on their respective deemed sales of target affiliate stock.

Example 4. (i) T's sole asset, all of the FT1 stock, has a basis of $25 and a fair market value of $150. FT1's sole asset, all of the FT2 stock, has a basis of $75 and a fair market value of $150. FT1 and FT2 each have $50 of accumulated earnings and profits for purposes of section 1248(c) and (d). FT2's assets have a basis of $125 and a fair market value of $150, and their sale would not generate subpart F income under section 951. The sale of the FT2 stock or assets would not generate income effectively connected with the conduct of a trade or business within the United States. FT1 does not have an election in effect under section 953(d) and neither FT1 nor FT2 is a passive foreign investment company.

(ii) P makes a qualified stock purchase of T and makes a section 338 election for T. T's deemed purchase of the FT1 stock results in a qualified stock purchase of FT1 and a section 338 election is made for FT1. Similarly, FT1's deemed purchase of the FT2 stock results in a qualified stock purchase of FT2 and a section 338 election is made for FT2.

(iii) T recognizes $125 of gain on the deemed sale of the FT1 stock under paragraph (h)(3) of this section. FT1 does not recognize $75 of gain on the deemed sale of the FT2 stock under paragraph (h)(2) of this section. FT2 recognizes $25 of gain on the deemed sale of its assets. The $125 gain T recognizes on the deemed sale of the FT1 stock is included in T's income as a dividend under section 1248, because FT1 and FT2 have sufficient earnings and profits for full recharacterization ($50 of accumulated earnings and profits in FT1, $50 of accumulated earnings and profits in FT2, and $25 of deemed sale earnings and profits in FT2). Section 1.338–9(b). For purposes of sections 901 through 908, the source and foreign tax credit limitation basket of $25 of the recharacterized gain on the deemed sale of the FT1 stock is determined under section 338(h)(16).

§ 1.338–5 Adjusted grossed-up basis.

(a) *Scope.* This section provides rules under section 338(b) to determine the adjusted grossed-up basis (AGUB) for target. AGUB is the amount for which new target is deemed to have purchased all of its assets in the deemed purchase under section 338(a)(2). AGUB is allocated among target's assets in accordance with § 1.338–6 to determine the price at which the assets are deemed to have been purchased. When a subsequent increase or decrease with respect to an element of AGUB is required under general principles of tax law, redetermined AGUB is allocated among target's assets in accordance with § 1.338–7.

(b) *Determination of AGUB*—(1) *General rule.* AGUB is the sum of—

(i) The grossed-up basis in the purchasing corporation's recently purchased target stock;

(ii) The purchasing corporation's basis in nonrecently purchased target stock; and

(iii) The liabilities of new target.

(2) *Time and amount of AGUB*—(i) *Original determination.* AGUB is initially determined at the beginning of the day after the acquisition date of target. General principles of tax law apply in determining the timing and amount of the elements of AGUB.

(ii) *Redetermination of AGUB.* AGUB is redetermined at such time and in such amount as an increase or decrease would be required, under general principles of tax law, with respect to an element of AGUB. For example, AGUB is redetermined because of an increase or decrease in the amount paid or incurred for recently purchased stock or nonrecently purchased stock or because liabilities not originally taken into account in determining AGUB are subsequently taken into account. An increase or decrease to one element of AGUB also may cause an increase or decrease to another element of AGUB. For example, if there is an increase in the amount paid or incurred for recently purchased stock after the acquisition date, any increase in the basis of nonrecently purchased stock because a gain recognition election was made is also taken into account when AGUB is redetermined. Increases or decreases with respect to the elements of AGUB result in the reallocation of AGUB among target's assets under § 1.338–7.

(iii) *Examples.* The following examples illustrate this paragraph (b)(2):

Example 1. In Year 1, T, a manufacturer, purchases a customized delivery truck from X with purchase money indebtedness having a stated principal amount of $100,000. P acquires all of the stock of T in Year 3 for $700,000 and makes a section 338 election for T. Assume T has no liabilities other than its purchase money indebtedness to X. In Year 4, when T is neither insolvent nor in a title 11 case, T and X agree to reduce the amount of the purchase money indebtedness to $80,000. Assume that the reduction would be a purchase price reduction under section 108(e)(5). T and X's agreement to reduce the amount of the purchase money indebtedness would, under general principles of tax law that would apply if the deemed asset sale had actually occurred, change the amount of liabilities of old target taken into account in determining its basis. Accordingly, AGUB is redetermined at the time of the reduction. See paragraph (e)(2) of this section. Thus the purchase price reduction affects the basis of the truck only indirectly, through the mechanism of §§ 1.338–6 and 1.338–7. See § 1.338–4(b)(2)(iii) *Example* for the effect on ADSP.

Example 2. T, an accrual basis taxpayer, is a chemical manufacturer. In Year 1, T is obligated to remediate environmental contamination at the site of one of its plants. Assume that all the events have occurred that establish the fact of the liability and the amount of the liability can be determined with reasonable accuracy but economic performance has not occurred with respect to the liability within the meaning of section 461(h). P acquires all of the stock of T in Year 1 and makes a section 338 election for T. Assume that, if a corporation unrelated to T had actually purchased T's assets and assumed T's obligation to remediate the contamination, the corporation would not satisfy the economic performance requirements until Year 5. Under section 461(h), the assumed liability would not be

treated as incurred and taken into account in basis until that time. The incurrence of the liability in Year 5 under the economic performance rules is an increase in the amount of liabilities properly taken into account in basis and results in the redetermination of AGUB. (Respecting ADSP, compare § 1.461–4(d)(5), which provides that economic performance occurs for old T as the amount of the liability is properly taken into account in amount realized on the deemed asset sale. Thus ADSP is not redetermined when new T satisfies the economic performance requirements.)

(c) *Grossed-up basis of recently purchased stock.* The purchasing corporation's grossed-up basis of recently purchased target stock (as defined in section 338(b)(6)(A)) is an amount equal to—

(1) The purchasing corporation's basis in recently purchased target stock at the beginning of the day after the acquisition date determined without regard to the acquisition costs taken into account in paragraph (c)(3) of this section;

(2) Multiplied by a fraction, the numerator of which is 100 minus the number that is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock, and the denominator of which is the number equal to the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's recently purchased target stock;

(3) Plus the acquisition costs the purchasing corporation incurred in connection with its purchase of the recently purchased stock that are capitalized in the basis of such stock (e.g., brokerage commissions and any similar costs incurred by the purchasing corporation to acquire the stock).

(d) *Basis of nonrecently purchased stock; gain recognition election*—(1) *No gain recognition election.* In the absence of a gain recognition election under section 338(b)(3) and this section, the purchasing corporation retains its basis in the nonrecently purchased stock.

(2) *Procedure for making gain recognition election.* A gain recognition election may be made for nonrecently purchased stock of target (or a target affiliate) only if a section 338 election is made for target (or the target affiliate). The gain recognition election is made by attaching a gain recognition statement to a timely filed Form 8023 for target. The gain recognition statement must contain the information specified in the form and its instructions. The gain recognition election is irrevocable. If a section 338(h)(10) election is made for target, see § 1.338(h)(10)–1(d)(1) (providing that the purchasing corporation is automatically deemed to have made a gain recognition election for its nonrecently purchased T stock).

(3) *Effect of gain recognition election*—(i) *In general.* If the purchasing corporation makes a gain recognition election, then for all purposes of the Internal Revenue Code—

(A) The purchasing corporation is treated as if it sold on the acquisition date the nonrecently purchased target stock for the basis amount determined under paragraph (d)(3)(ii) of this section; and

(B) The purchasing corporation's basis on the acquisition date in nonrecently purchased target stock immediately following the deemed sale in paragraph (d)(3)(i)(A) of this section is the basis amount.

(ii) *Basis amount.* The basis amount is equal to the amount in paragraph (c)(1) of this section (the purchasing corporation's basis in recently purchased target stock at the beginning of the day after the acquisition date determined without regard to the acquisition costs taken into account in paragraph (c)(3) of this section) multiplied by a fraction the numerator of which is the percentage of target stock (by value, determined on the acquisition date) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount. Thus, if target has a single class of outstanding stock, the purchasing corporation's basis in each share of nonrecently purchased target stock after the gain recognition election is equal to the average price per share of the purchasing corporation's recently purchased target stock.

(iii) *Losses not recognized.* Only gains (unreduced by losses) on the nonrecently purchased target stock are recognized.

(iv) *Stock subject to election.* The gain recognition election applies to—

(A) All nonrecently purchased target stock; and

(B) Any nonrecently purchased stock in a target affiliate having the same acquisition date as target if such target affiliate stock is held by the purchasing corporation on such date.

(e) *Liabilities of new target*—(1) *In general.* The liabilities of new target are the liabilities of target as of the beginning of the day after the acquisition date (but see § 1.338–1(d) (regarding certain transactions on the acquisition date)). In order to be taken into account in AGUB, a liability must be a liability of target that is properly taken into account in basis under general principles of tax law that would apply if new target had acquired its assets from an unrelated person for consideration that included discharge of the liabilities of that unrelated person. Such liabilities may include liabilities for the tax consequences resulting from the deemed sale.

(2) *Time and amount of liabilities.* The time for taking into account liabilities of old target in determining AGUB and the amount of the liabilities taken into account is determined as if new target had acquired its assets from an unrelated person for consideration that included the discharge of its liabilities.

(3) *Interaction with deemed sale tax consequences.* In general, see § 1.338–4(e). Although ADSP and AGUB are not necessarily linked, if an increase in the amount realized for recently purchased stock of target is taken into account after the acquisition date, and if the tax on the deemed sale tax consequences is a liability of target, any increase in that liability is also taken into account in redetermining AGUB.

(f) *Adjustments by the Internal Revenue Service.* In connection with the examination of a return, the Commissioner may increase (or decrease) AGUB under the authority of section 338(b)(2) and allocate such amounts to target's assets under the authority of section 338(b)(5) so that AGUB and the basis of target's assets properly reflect the cost to the purchasing corporation of its interest in target's assets. Such items may include distributions from target to the purchasing corporation, capital contributions from the purchasing corporation to target during the 12-month acquisition period, or acquisitions of target stock by the purchasing corporation after the acquisition date from minority shareholders. See also § 1.338–1(d) (regarding certain transactions on the acquisition date).

(g) *Examples.* The following examples illustrate this section. For purposes of the examples in this paragraph (g), T has no liabilities other than the tax liability for the deemed sale tax consequences, T shareholders incur no costs in selling the T stock, and P incurs no costs in acquiring the T stock. The examples are as follows:

Example 1. (i) Before July 1 of Year 1, P purchases 10 of the 100 shares of T stock for $5,000. On July 1 of Year 2, P purchases 80 shares of T stock for $60,000 and makes a section 338 election for T. As of July 1 of Year 2, T's only asset is raw land with an adjusted basis to T of $50,400 and a fair market value of $100,000. T has no loss or tax credit carryovers to Year 2. T's marginal

tax rate for any ordinary income or net capital gain resulting from the deemed asset sale is 34 percent. The 10 shares purchased before July 1 of Year 1 constitute nonrecently purchased T stock with respect to P's qualified stock purchase of T stock on July 1 of Year 2.

(ii) The ADSP formula as applied to these facts is the same as in § 1.338–4(g) *Example 1.* Accordingly, the ADSP for T is $87,672.72. The existence of nonrecently purchased T stock is irrelevant for purposes of the ADSP formula, because that formula treats P's nonrecently purchased T stock in the same manner as T stock not held by P.

(iii) The total tax liability resulting from T's deemed asset sale, as calculated under the ADSP formula, is $12,672.72.

(iv) If P does not make a gain recognition election, the AGUB of new T's assets is $85,172.72, determined as follows (In the following formula below, GRP is the grossed-up basis in P's recently purchased T stock, BNP is P's basis in nonrecently purchased T stock, L is T's liabilities, and X is P's acquisition costs for the recently purchased T stock):

AGUB = GRP + BNP + L + X
AGUB = $60,000 × [(1 − .1)/.8] + $5,000 + $12,672.72 + 0
AGUB = $85,172.72

(v) If P makes a gain recognition election, the AGUB of new T's assets is $87,672.72, determined as follows:

AGUB = $60,000 × [(1 − .1)/.8] + $60,000 × [(1 − .1)/.8] × [.1/(1 − .1)] + $12,672.72
AGUB = $87,672.72

(vi) The calculation of AGUB if P makes a gain recognition election may be simplified as follows:

AGUB = $60,000/.8 + $12,672.72
AGUB = $87,672.72

(vii) As a result of the gain recognition election, P's basis in its nonrecently purchased T stock is increased from $5,000 to $7,500 (i.e., $60,000 × [(1 − .1)/.8] × [.1/(1 − .1)]). Thus, P recognizes a gain in Year 2 with respect to its nonrecently purchased T stock of $2,500 (i.e., $7,500 − $5,000).

Example 2. On January 1 of Year 1, P purchases one-third of the T stock. On March 1 of Year 1, T distributes a dividend to all of its shareholders. On April 15 of Year 1, P purchases the remaining T stock and makes a section 338 election for T. In appropriate circumstances, the Commissioner may decrease the AGUB of T to take into account the payment of the dividend and properly reflect the fair market value of T's assets deemed purchased.

Example 3. (i) T's sole asset is a building worth $100,000. At this time, T has 100 shares of stock outstanding. On August 1 of Year 1, P purchases 10 of the 100 shares of T stock for $8,000. On June 1 of Year 2, P purchases 50 shares of T stock for $50,000. On June 15 of Year 2, P contributes a tract of land to the capital of T and receives 10 additional shares of T stock as a result of the contribution. Both the basis and fair market value of the land at that time are $10,800. On June 30 of Year 2, P purchases the remaining 40 shares of T stock for $40,000 and makes a section 338 election for T. The AGUB of T is $108,800.

(ii) To prevent the shifting of basis from the contributed property to other assets of T, the Commissioner may allocate $10,800 of the AGUB to the land, leaving $98,000 to be allocated to the building. See paragraph (f) of this section. Otherwise, applying the allocation rules of § 1.338–6 would, on these facts, result in an allocation to the recently contributed land of an amount less than its value of $10,800, with the difference being allocated to the building already held by T.

§ 1.338–6 Allocation of ADSP and AGUB among target assets.

(a) *Scope*—(1) *In general.* This section prescribes rules for allocating ADSP and AGUB among the acquisition date assets of a target for which a section 338 election is made.

(2) *Fair market value*—(i) *In general.* Generally, the fair market value of an asset is its gross fair market value (i.e., fair market value determined without regard to mortgages, liens, pledges, or other liabilities). However, for purposes of determining the amount of old target's deemed sale tax consequences, the fair market value of any property subject to a nonrecourse indebtedness will be treated as being not less than the amount of such indebtedness. (For purposes of the preceding sentence, a liability that was incurred because of the acquisition of the property is disregarded to the extent that such liability was not taken into account in determining old target's basis in such property.)

(ii) *Transaction costs.* Transaction costs are not taken into account in allocating ADSP or AGUB to assets in the deemed sale (except indirectly through their effect on the total ADSP or AGUB to be allocated).

(iii) *Internal Revenue Service authority.* In connection with the examination of a return, the Internal Revenue Service may challenge the taxpayer's determination of the fair market value of any asset by any appropriate method and take into account all factors, including any lack of adverse tax interests between the parties.

(b) *General rule for allocating ADSP and AGUB*—(1) *Reduction in the amount of consideration for Class I assets.* Both ADSP and AGUB, in the respective allocation of each, are first reduced by the amount of Class I assets. Class I assets are cash and general deposit accounts (including savings and checking accounts) other than certificates of deposit held in banks, savings and loan associations, and other depository institutions. If the amount of Class I assets exceeds AGUB, new target will immediately realize ordinary income in an amount equal to such excess. The amount of ADSP or AGUB remaining after the reduction is to be allocated to the remaining acquisition date assets.

(2) *Other assets*—(i) *In general.* Subject to the limitations and other rules of paragraph (c) of this section, ADSP and AGUB (as reduced by the amount of Class I assets) are allocated among Class II acquisition date assets of target in proportion to the fair market values of such Class II assets at such time, then among Class III assets so held in such proportion, then among Class IV assets so held in such proportion, then among Class V assets so held in such proportion, then among Class VI assets so held in such proportion, and finally to Class VII assets. If an asset is described below as includible in more than one class, then it is included in such class with the lower or lowest class number (for instance, Class III has a lower class number than Class IV).

(ii) *Class II assets.* Class II assets are actively traded personal property within the meaning of section 1092(d)(1) and § 1.1092(d)–1 (determined without regard to section 1092(d)(3)). In addition, Class II assets include certificates of deposit and foreign currency even if they are not actively traded personal property. Class II assets do not include stock of target affiliates, whether or not of a class that is actively traded, other than actively traded stock described in section 1504(a)(4). Examples of Class II assets include U.S. government securities and publicly traded stock.

(iii) *Class III assets.* Class III assets are assets that the taxpayer marks to market at least annually for Federal income tax purposes and debt instruments (including accounts receivable). However, Class III assets do not include—

(A) Debt instruments issued by persons related at the beginning of the day following the acquisition date to the target under section 267(b) or 707;

(B) Contingent debt instruments subject to § 1.1275–4, § 1.483–4, or section 988, unless the instrument is subject to the non-contingent bond method of § 1.1275–4(b) or is described in § 1.988–2(b)(2)(i)(B)(*2*); and

(C) Debt instruments convertible into the stock of the issuer or other property.

(iv) *Class IV assets.* Class IV assets are stock in trade of the taxpayer or other property of a kind that would properly be included in the inventory of taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.

(v) *Class V assets.* Class V assets are all assets other than Class I, II, III, IV, VI, and VII assets.

(vi) *Class VI assets.* Class VI assets are all section 197 intangibles, as defined in section 197, except goodwill and going concern value.

(vii) *Class VII assets.* Class VII assets are goodwill and going concern value (whether or not the goodwill or going concern value qualifies as a section 197 intangible).

(3) *Other items designated by the Internal Revenue Service.* Similar items may be added to any class described in this paragraph (b) by designation in the Internal Revenue Bulletin by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(c) *Certain limitations and other rules for allocation to an asset*—(1) *Allocation not to exceed fair market value.* The amount of ADSP or AGUB allocated to an asset (other than Class VII assets) cannot exceed the fair market value of that asset at the beginning of the day after the acquisition date.

(2) *Allocation subject to other rules.* The amount of ADSP or AGUB allocated to an asset is subject to other provisions of the Internal Revenue Code or general principles of tax law in the same manner as if such asset were transferred to or acquired from an unrelated person in a sale or exchange. For example, if the deemed asset sale is a transaction described in section 1056(a) (relating to basis limitation for player contracts transferred in connection with the sale of a franchise), the amount of AGUB allocated to a contract for the services of an athlete cannot exceed the limitation imposed by that section. As another example, section 197(f)(5) applies in determining the amount of AGUB allocated to an amortizable section 197 intangible resulting from an assumption-reinsurance transaction.

(3) *Special rule for allocating AGUB when purchasing corporation has nonrecently purchased stock*—(i) *Scope.* This paragraph (c)(3) applies if at the beginning of the day after the acquisition date—

(A) The purchasing corporation holds nonrecently purchased stock for which a gain recognition election under section 338(b)(3) and § 1.338–5(d) is not made; and

(B) The hypothetical purchase price determined under paragraph (c)(3)(ii) of this section exceeds the AGUB determined under § 1.338–5(b).

(ii) *Determination of hypothetical purchase price.* Hypothetical purchase price is the AGUB that would result if a gain recognition election were made.

(iii) *Allocation of AGUB.* Subject to the limitations in paragraphs (c)(1) and (2) of this section, the portion of AGUB (after reduction by the amount of Class I assets) to be allocated to each Class II, III, IV, V, VI, and VII asset of target held at the beginning of the day after the acquisition date is determined by multiplying—

(A) The amount that would be allocated to such asset under the general rules of this section were AGUB equal to the hypothetical purchase price; by

(B) A fraction, the numerator of which is actual AGUB (after reduction by the amount of Class I assets) and the denominator of which is the hypothetical purchase price (after reduction by the amount of Class I assets).

(4) *Liabilities taken into account in determining amount realized on subsequent disposition.* In determining the amount realized on a subsequent sale or other disposition of property deemed purchased by new target, § 1.1001–2(a)(3) shall not apply to any liability that was taken into account in AGUB.

(d) *Examples.* The following examples illustrate §§ 1.338–4, 1.338–5, and this section:

Example 1. (i) T owns 90 percent of the outstanding T1 stock. P purchases 100 percent of the outstanding T stock for $2,000. There are no acquisition costs. P makes a section 338 election for T and, as a result, T1 is considered acquired in a qualified stock purchase. A section 338 election is made for T1. The grossed-up basis of the T stock is $2,000 (i.e., $2,000 + 1/1).

(ii) The liabilities of T as of the beginning of the day after the acquisition date (including the tax liability for the deemed sale tax consequences) that would, under general principles of tax law, properly be taken into account at that time, are as follows:

Liabilities (nonrecourse mortgage plus unsecured liabilities)	$700
Taxes Payable	300
Total	1,000

(iii) The AGUB of T is determined as follows:

Grossed-up basis	$2,000
Total liabilities	1,000
AGUB	3,000

(iv) Assume that ADSP is also $3,000.

(v) Assume that, at the beginning of the day after the acquisition date, T's cash and the fair market values of T's Class II, III, IV, and V assets are as follows:

Asset class	Asset	Fair market value
I	Cash	*$200
II	Portfolio of actively traded securities.	300
III	Accounts receivable	600
IV	Inventory	300
V	Building	800
V	Land	200
V	Investment in T1	450
	Total	2,850

*Amount.

(vi) Under paragraph (b)(1) of this section, the amount of ADSP and AGUB allocable to T's Class II, III, IV, and V assets is reduced by the amount of cash to $2,800, i.e., $3,000—$200. $300 of ADSP and of AGUB is then allocated to actively traded securities. $600 of ADSP and of AGUB is then allocated to accounts receivable. $300 of ADSP and of AGUB is then allocated to the inventory. Since the remaining amount of ADSP and of AGUB is $1,600 (i.e., $3,000—($200 + $300 + $600 + $300)), an amount which exceeds the sum of the fair market values of T's Class V assets, the amount of ADSP and of AGUB allocated to each Class V asset is its fair market value:

Building	$800
Land	200
Investment in T1	450
Total	1,450

(vii) T has no Class VI assets. The amount of ADSP and of AGUB allocated to T's Class VII assets (goodwill and going concern value) is $150, i.e., $1,600–$1,450.

(viii) The grossed-up basis of the T1 stock is $500, i.e., $450 × 1/.9.

(ix) The liabilities of T as of the beginning of the day after the acquisition date (including the tax liability for the deemed sale tax consequences) that would, under general principles of tax law, properly be taken into account at that time, are as follows:

General Liabilities	$100
Taxes Payable	20
Total	120

(x) The AGUB of T1 is determined as follows:

Grossed-up basis of T1 Stock	$ 500
Liabilities	120
AGUB	620

(xi) Assume that ADSP is also $620.

(xii) Assume that at the beginning of the day after the acquisition date, T1's cash and the fair market values of its Class IV and VI assets are as follows:

Asset class	Asset	Fair market value
I	Cash	*$50
IV	Inventory	200
VI	Patent	350
	Total	600

*Amount.

(xiii) The amount of ADSP and of AGUB allocable to T1's Class IV and VI assets is first reduced by the $50 of cash.

(xiv) Because the remaining amount of ADSP and of AGUB ($570) is an amount which exceeds the fair market value of T1's

only Class IV asset, the inventory, the amount allocated to the inventory is its fair market value ($200). After that, the remaining amount of ADSP and of AGUB ($370) exceeds the fair market value of T1's only Class VI asset, the patent. Thus, the amount of ADSP and of AGUB allocated to the patent is its fair market value ($350).

(xv) The amount of ADSP and of AGUB allocated to T1's Class VII assets (goodwill and going concern value) is $20, i.e., $570–$550.

Example 2. (i) Assume that the facts are the same as in *Example 1* except that P has, for five years, owned 20 percent of T's stock, which has a basis in P's hands at the beginning of the day after the acquisition date of $100, and P purchases the remaining 80 percent of T's stock for $1,600. P does not make a gain recognition election under section 338(b)(3).

(ii) Under § 1.338–5(c), the grossed-up basis of recently purchased T stock is $1,600, i.e., $1,600 × (1 − .2)/.8.

(iii) The AGUB of T is determined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5(c) ($1,600 × (1 − .2)/.8)	$1,600
Basis of nonrecently purchased stock	100
Liabilities	1,000
AGUB	2,700

(iv) Since P holds nonrecently purchased stock, the hypothetical purchase price of the T stock must be computed and is determined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5(c) ($1,600 × (1 − .2)/.8)	$1,600
Basis of nonrecently purchased stock as if the gain recognition election under § 1.338–5(d)(2) had been made ($1,600 × .2/(1 − .2))	400
Liabilities	1,000
Total	3,000

(v) Since the hypothetical purchase price ($3,000) exceeds the AGUB ($2,700) and no gain recognition election is made under section 338(b)(3), AGUB is allocated under paragraph (c)(3) of this section.

(vi) First, an AGUB amount equal to the hypothetical purchase price ($3,000) is allocated among the assets under the general rules of this section. The allocation is set forth in the column below entitled *Original Allocation.* Next, the allocation to each asset in Class II through Class VII is multiplied by a fraction having a numerator equal to the actual AGUB reduced by the amount of Class I assets ($2,700 − $200 = $2,500) and a denominator equal to the hypothetical purchase price reduced by the amount of Class I assets ($3,000 − $200 = $2,800), or 2,500/2,800. This produces the *Final Allocation:*

Class	Asset	Original allocation	Final allocation
I	Cash	$200	$200
II	Portfolio of actively traded securities	300	*268
III	Accounts receivable	600	536
IV	Inventory	300	268
V	Building	800	714
V	Land	200	178
V	Investment in T1	450	402
VII	Goodwill and going concern value	150	134
	Total	3,000	2,700

* All numbers rounded for convenience.

§ 1.338–7 Allocation of redetermined ADSP and AGUB among target assets.

(a) *Scope.* ADSP and AGUB are redetermined at such time and in such amount as an increase or decrease would be required under general principles of tax law for the elements of ADSP or AGUB. This section provides rules for allocating redetermined ADSP or AGUB.

(b) *Allocation of redetermined ADSP and AGUB.* When ADSP or AGUB is redetermined, a new allocation of ADSP or AGUB is made by allocating the redetermined ADSP or AGUB amount under the rules of § 1.338–6. If the allocation of the redetermined ADSP or AGUB amount under § 1.338–6 to a given asset is different from the original allocation to it, the difference is added to or subtracted from the original allocation to the asset, as appropriate. (See paragraph (d) of this section for new target's treatment of the amount so allocated.) Amounts allocable to an acquisition date asset (or with respect to a disposed-of acquisition date asset) are subject to all the asset allocation rules (for example, the fair market value limitation in § 1.338–6(c)(1)) as if the redetermined ADSP or AGUB were the ADSP or AGUB on the acquisition date.

(c) *Special rules for ADSP*—(1) *Increases or decreases in deemed sale tax consequences taxable notwithstanding old target ceases to exist.* To the extent general principles of tax law would require a seller in an actual asset sale to account for events relating to the sale that occur after the sale date, target must make such an accounting. Target is not precluded from realizing additional deemed sale tax consequences because the target is treated as a new corporation after the acquisition date.

(2) *Procedure for transactions in which section 338(h)(10) is not elected*—(i) *Deemed sale tax consequences included in new target's return.* If an election under section 338(h)(10) is not made, any additional deemed sale tax consequences of old target resulting from an increase or decrease in the ADSP are included in new target's income tax return for new target's taxable year in which the increase or decrease is taken into account. For example, if after the acquisition date there is an increase in the allocable ADSP of section 1245 property for which the recomputed basis (but not the adjusted basis) exceeds the portion of the ADSP allocable to that particular asset on the acquisition date, the additional gain is treated as ordinary income to the extent it does not exceed such excess amount. See paragraph (c)(2)(ii) of this section for the special treatment of old target's carryovers and carrybacks. Although included in new target's income tax return, the deemed sale tax consequences are separately accounted for as an item of old target and may not be offset by income, gain, deduction, loss, credit, or other amount of new target. The amount of tax on income of old target resulting from an increase or decrease in the ADSP is determined as if such deemed sale tax consequences had been recognized in old target's taxable year ending at the close of the acquisition date. However, because the income resulting from the increase or decrease in ADSP is reportable in new target's taxable year of the increase or decrease, not in old target's taxable year ending at the close of the acquisition date, there is not a resulting underpayment of tax in that

past taxable year of old target for purposes of calculation of interest due.

(ii) *Carryovers and carrybacks*—(A) *Loss carryovers to new target taxable years.* A net operating loss or net capital loss of old target may be carried forward to a taxable year of new target, under the principles of section 172 or 1212, as applicable, but is allowed as a deduction only to the extent of any recognized income of old target for such taxable year, as described in paragraph (c)(2)(i) of this section. For this purpose, however, taxable years of new target are not taken into account in applying the limitations in section 172(b)(1) or 1212(a)(1)(B) (or other similar limitations). In applying sections 172(b) and 1212(a)(1), only income, gain, loss, deduction, credit, and other amounts of old target are taken into account. Thus, if old target has an unexpired net operating loss at the close of its taxable year in which the deemed asset sale occurred that could be carried forward to a subsequent taxable year, such loss may be carried forward until it is absorbed by old target's income.

(B) *Loss carrybacks to taxable years of old target.* An ordinary loss or capital loss accounted for as a separate item of old target under paragraph (c)(2)(i) of this section may be carried back to a taxable year of old target under the principles of section 172 or 1212, as applicable. For this purpose, taxable years of new target are not taken into account in applying the limitations in section 172(b) or 1212(a) (or other similar limitations).

(C) *Credit carryovers and carrybacks.* The principles described in paragraphs (c)(2)(ii)(A) and (B) of this section apply to carryovers and carrybacks of amounts for purposes of determining the amount of a credit allowable under part IV, subchapter A, chapter 1 of the Internal Revenue Code. Thus, for example, credit carryovers of old target may offset only income tax attributable to items described in paragraph (c)(2)(i) of this section.

(3) *Procedure for transactions in which section 338(h)(10) is elected.* If an election under section 338(h)(10) is made, any changes in the deemed sale tax consequences caused by an increase or decrease in the ADSP are accounted for in determining the taxable income (or other amount) of the member of the selling consolidated group, the selling affiliate, or the S corporation shareholders to which such income, loss, or other amount is attributable for the taxable year in which such increase or decrease is taken into account.

(d) *Special rules for AGUB*—(1) *Effect of disposition or depreciation of acquisition date assets.* If an acquisition date asset has been disposed of, depreciated, amortized, or depleted by new target before an amount is added to the original allocation to the asset, the increased amount otherwise allocable to such asset is taken into account under general principles of tax law that apply when part of the cost of an asset not previously taken into account in basis is paid or incurred after the asset has been disposed of, depreciated, amortized, or depleted. A similar rule applies when an amount is subtracted from the original allocation to the asset. For purposes of the preceding sentence, an asset is considered to have been disposed of to the extent that its allocable portion of the decrease in AGUB would reduce its basis below zero.

(2) *Section 38 property.* Section 1.47–2(c) applies to a reduction in basis of section 38 property under this section.

(e) *Examples.* The following examples illustrate this section. Any amount described in the following examples is exclusive of interest. For rules characterizing deferred contingent payments as principal or interest, see §§ 1.483–4, 1.1274–2(g), and 1.1275–4(c). The examples are as follows:

Example 1. (i)(A) T's assets other than goodwill and going concern value, and their fair market values at the beginning of the day after the acquisition date, are as follows:

Asset class	Asset	Fair market value
V	Building	$ 100
V	Stock of X (not a target).	200
	Total	300

(B) T has no liabilities other than a contingent liability that would not be taken into account under general principles of tax law in an asset sale between unrelated parties when the buyer assumed the liability or took property subject to it.

(ii)(A) On September 1, 2000, P purchases all of the outstanding stock of T for $270 and makes a section 338 election for T. The grossed-up basis of the T stock and T's AGUB are both $270. The AGUB is ratably allocated among T's Class V assets in proportion to their fair market values as follows:

Asset	Basis
Building ($270 × 100/300)	$90
Stock ($270 × 200/300)	180
Total	270

(B) No amount is allocated to the Class VII assets. New T is a calendar year taxpayer. Assume that the X stock is a capital asset in the hands of new T.

(iii) On January 1, 2001, new T sells the X stock and uses the proceeds to purchase inventory.

(iv) Pursuant to events on June 30, 2002, the contingent liability of old T is at that time properly taken into account under general principles of tax law. The amount of the liability is $60.

(v) T's AGUB increases by $60 from $270 to $330. This $60 increase in AGUB is first allocated among T's acquisition date assets in accordance with the provisions of § 1.338–6. Because the redetermined AGUB for T ($330) exceeds the sum of the fair market values at the beginning of the day after the acquisition date of the Class V acquisition date assets ($300), AGUB allocated to those assets is limited to those fair market values under § 1.338–6(c)(1). As there are no Class VI assets, the remaining AGUB of $30 is allocated to goodwill and going concern value (Class VII assets). The amount of increase in AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase
Building	$90	$100	$10
X Stock	180	200	20
Goodwill and going concern value	0	30	30
Total	270	330	60

(vi) Since the X stock was disposed of before the contingent liability was properly taken into account for tax purposes, no amount of the increase in AGUB attributable to such stock may be allocated to any T asset. Rather, such amount ($20) is allowed as a capital loss to T for the taxable year 2002 under the principles of *Arrowsmith* v. *Commissioner,* 344 U.S. 6 (1952). In addition, the $10 increase in AGUB allocated to the building and the $30 increase in AGUB allocated to the goodwill and going concern value are treated as basis redeterminations in 2002. See paragraph (d)(1) of this section.

Example 2. (i) On January 1, 2002, P purchases all of the outstanding stock of T and makes a section 338 election for T. Assume that ADSP and AGUB of T are both $500 and are allocated among T's acquisition date assets as follows:

Asset Class	Asset	Basis
V	Machinery	$150
V	Land	250
VII	Goodwill and going concern value.	100
	Total	500

(ii) On September 30, 2004, P filed a claim against the selling shareholders of T in a court of appropriate jurisdiction alleging fraud in the sale of the T stock.

(iii) On January 1, 2007, the former shareholders refund $140 of the purchase price to P in a settlement of the lawsuit.

Assume that, under general principles of tax law, both the seller and the buyer properly take into account such refund when paid. Assume also that the refund has no effect on the tax liability for the deemed sale tax consequences. This refund results in a decrease of T's ADSP and AGUB of $140, from $500 to $360.

(iv) The redetermined ADSP and AGUB of $360 is allocated among T's acquisition date assets. Because ADSP and AGUB do not exceed the fair market value of the Class V assets, the ADSP and AGUB amounts are allocated to the Class V assets in proportion to their fair market values at the beginning of the day after the acquisition date. Thus, $135 ($150 × ($360/($150 + $250))) is allocated to the machinery and $225 ($250 × ($360/($150 + $250))) is allocated to the land. Accordingly, the basis of the machinery is reduced by $15 ($150 original allocation—$135 redetermined allocation) and the basis of the land is reduced by $25 ($250 original allocation—$225 redetermined allocation). No amount is allocated to the Class VII assets. Accordingly, the basis of the goodwill and going concern value is reduced by $100 ($100 original allocation—$0 redetermined allocation).

(v) Assume that, as a result of deductions under section 168, the adjusted basis of the machinery immediately before the decrease in AGUB is zero. The machinery is treated as if it were disposed of before the decrease is taken into account. In 2007, T recognizes income of $15, the character of which is determined under the principles of *Arrowsmith* v. *Commissioner* and the tax benefit rule. No adjustment to the basis of T's assets is made for any tax paid on this amount. Assume also that, as a result of amortization deductions, the adjusted basis of the goodwill and going concern value immediately before the decrease in AGUB is $40. A similar adjustment to income is made in 2007 with respect to the $60 of previously amortized goodwill and going concern value.

(vi) In summary, the basis of T's acquisition date assets, as of January 1, 2007, is as follows:

Asset	Basis
Machinery	$0
Land	225
Goodwill and going concern value	0

Example 3. (i) Assume that the facts are the same as § 1.338–6(d) *Example 2* except that the recently purchased stock is acquired for $1,600 plus additional payments that are contingent upon T's future earnings. Assume that, under general principles of tax law, such later payments are properly taken into account when paid. Thus, T's AGUB, determined as of the beginning of the day after the acquisition date (after reduction by T's cash of $200), is $2,500 and is allocated among T's acquisition date assets under § 1.338–6(c)(3)(iii) as follows:

Class	Asset	Final allocation
I	Cash	$200
II	Portfolio of actively traded securities.	*268
III	Accounts receivable	536
IV	Inventory	268
V	Building	714
V	Land	178
V	Investment in T1	402
VII	Goodwill and going concern value.	134
	Total	2,700

*All numbers rounded for convenience.

(ii) At a later point in time, P pays an additional $200 for its recently purchased T stock. Assume that the additional consideration paid would not increase T's tax liability for the deemed sale tax consequences.

(iii) T's AGUB increases by $200, from $2,700 to $2,900. This $200 increase in AGUB is accounted for in accordance with the provisions of § 1.338–6(c)(3)(iii).

(iv) The hypothetical purchase price of the T stock is redetermined as follows:

Grossed-up basis of recently purchased stock as determined under § 1.338–5(c) ($1,800 × (1 − .2)/.8)	$ 1,800
Basis of nonrecently purchased stock as if the gain recognition election under § 1.338–5(d)(2) had been made ($1,800 × .2/(1 − .2))	450
Liabilities	1,000
Total	3,250

(v) Since the redetermined hypothetical purchase price ($3,250) exceeds the redetermined AGUB ($2,900) and no gain recognition election was made under section 338(b)(3), the rules of § 1.338–6(c)(3)(iii) are reapplied using the redetermined hypothetical purchase price and the redetermined AGUB.

(vi) First, an AGUB amount equal to the redetermined hypothetical purchase price ($3,250) is allocated among the assets under the general rules of § 1.338–6. The allocation is set forth in the column below entitled *Hypothetical Allocation.* Next, the allocation to each asset in Class II through Class VII is multiplied by a fraction with a numerator equal to the actual redetermined AGUB reduced by the amount of Class I assets ($2,900 − $200 = $2,700) and a denominator equal to the redetermined hypothetical purchase price reduced by the amount of Class I assets ($3,250 − $200 = $3,050), or 2,700/3,050. This produces the *Final Allocation:*

Class	Asset	Hypothetical allocation	Final allocation
I	Cash	$200	$200
II	Portfolio of actively traded securities	300	*266
III	Accounts receivable	600	531
IV	Inventory	300	266
V	Building	800	708
V	Land	200	177
V	Investment in T1	450	398
VII	Goodwill and going concern value	400	354
	Total	3,250	2900

*All numbers rounded for convenience.

(vii) As illustrated by this example, reapplying § 1.338–6(c)(3) results in a basis increase for some assets and a basis decrease for other assets. The amount of redetermined AGUB allocated to each acquisition date asset is determined as follows:

Asset	Original (c)(3) allocation	Redetermined (c)(3) allocation	Increase (decrease)
Portfolio of actively traded securities	$268	$266	$(2)
Accounts receivable	536	531	(5)
Inventory	268	266	(2)

Asset	Original (c)(3) allocation	Redetermined (c)(3) allocation	Increase (decrease)
Building	714	708	(6)
Land	178	177	(1)
Investment in T1	402	398	(4)
Goodwill and going concern value	134	354	220
Total	2,500	2,700	200

Example 4. (i) On January 1, 2001, P purchases all of the outstanding T stock and makes a section 338 election for T. P pays $700 of cash and promises also to pay a maximum $300 of contingent consideration at various times in the future. Assume that, under general principles of tax law, such later payments are properly taken into account by P when paid. Assume also, however, that the current fair market value of the contingent payments is reasonably ascertainable. The fair market value of T's assets (other than goodwill and going concern value) as of the beginning of the following day is as follows:

Asset class	Assets	Fair market value
V	Equipment	$200
V	Non-actively traded securities.	100
V	Building	500
	Total	800

(ii) T has no liabilities. The AGUB is $700. In calculating ADSP, assume that, under § 1.1001–1, the current amount realized attributable to the contingent consideration is $200. ADSP is therefore $900 ($700 cash plus $200).

(iii) (A) The AGUB of $700 is ratably allocated among T's Class V acquisition date assets in proportion to their fair market values as follows:

Asset	Basis
Equipment ($700 × 200/800)	$175.00
Non-actively traded securities ($700 × 100/800)	87.50
Building ($700 × 500/800)	437.50
Total	700.00

(B) No amount is allocated to goodwill or going concern value.

(iv) (A) The ADSP of $900 is ratably allocated among T's Class V acquisition date assets in proportion to their fair market values as follows:

Asset	Basis
Equipment	$200
Non-actively traded securities	100
Building	500
Total	800

(B) The remaining ADSP, $100, is allocated to goodwill and going concern value (Class VII).

(v) P and T file a consolidated return for 2001 and each following year with P as the common parent of the affiliated group.

(vi) In 2004, a contingent amount of $120 is paid by P. For old T, this payment has no effect on ADSP, because the payment is accounted for as a separate transaction. We have assumed that, under general principles of tax law, the payment is properly taken into account by P at the time made. Therefore, in 2004, there is an increase in new T's AGUB of $120. The amount of the increase allocated to each acquisition date asset is determined as follows:

Asset	Original AGUB	Redetermined AGUB	Increase
Equipment	$175.00	$200.00	$25.00
Land	87.50	100.00	12.50
Building	437.50	500.00	62.50
Goodwill and going concern value	0.00	20.00	20.00
Total	700.00	820.00	120.00

§§ 1.338–0T through 1.338–7T [Removed]

Par. 4. Sections 1.338–0T through 1.338–7T are removed.

Par. 5. Section 1.338–10 is added to read as follows:

§ 1.338–10 Filing of returns.

(a) *Returns including tax liability from deemed asset sale*—(1) *In general.* Except as provided in paragraphs (a)(2) and (3) of this section, any deemed sale tax consequences are reported on the final return of old target filed for old target's taxable year that ends at the close of the acquisition date. Paragraphs (a)(2), (3) and (4) of this section do not apply to elections under section 338(h)(10). If old target is the common parent of an affiliated group, the final return may be a consolidated return (any such consolidated return must also include any deemed sale tax consequences of any members of the consolidated group that are acquired by the purchasing corporation on the same acquisition date as old target).

(2) *Old target's final taxable year otherwise included in consolidated return of selling group*—(i) *General rule.* If the selling group files a consolidated return for the period that includes the acquisition date, old target is disaffiliated from that group immediately before the deemed asset sale and must file a deemed sale return separate from the group, which includes only the deemed sale tax consequences and the carryover items specified in paragraph (a)(2)(iii) of this section. The deemed asset sale occurs at the close of the acquisition date and is the last transaction of old target and the only transaction reported on the separate return. Except as provided in § 1.338–1(d) (regarding certain transactions on the acquisition date), any transactions of old target occurring on the acquisition date other than the deemed asset sale are included in the selling group's consolidated return. A deemed sale return includes a combined deemed sale return as defined in paragraph (a)(4) of this section.

(ii) *Separate taxable year.* The deemed asset sale included in the deemed sale return under this paragraph (a)(2) occurs in a separate taxable year, except that old target's taxable year of the sale and the consolidated year of the selling group that includes the acquisition date are treated as the same year for purposes of determining the

number of years in a carryover or carryback period.

(iii) *Carryover and carryback of tax attributes.* Target's attributes may be carried over to, and carried back from, the deemed sale return under the rules applicable to a corporation that ceases to be a member of a consolidated group.

(iv) *Old target is a component member of purchasing corporation's controlled group.* For purposes of its deemed sale return, target is a component member of the controlled group of corporations including the purchasing corporation unless target is treated as an excluded member under section 1563(b)(2).

(3) *Old target is an S corporation.* If target is an S corporation for the period that ends on the day before the acquisition date and a section 338 election (but not a section 338(h)(10) election) is filed for target, old target files a return as a C corporation reflecting its activities on the acquisition date, including target's deemed sale. See section 1362(d)(2). For purposes of this return, target is a component member of the controlled group of corporations including the purchasing corporation unless target is treated as an excluded member under section 1563(b)(2).

(4) *Combined deemed sale return*—(i) *General rule.* Under section 338(h)(15), a combined deemed sale return (combined return) may be filed for all targets from a single selling consolidated group (as defined in § 1.338(h)(10)–1(b)(3)) that are acquired by the purchasing corporation on the same acquisition date and that otherwise would be required to file separate deemed sale returns. The combined return must include all such targets. For example, T and T1 may be included in a combined return if—

(A) T and T1 are directly owned subsidiaries of S;

(B) S is the common parent of a consolidated group; and

(C) P makes qualified stock purchases of T and T1 on the same acquisition date.

(ii) *Gain and loss offsets.* Gains and losses recognized on the deemed asset sales by targets included in a combined return are treated as the gains and losses of a single target. In addition, loss carryovers of a target that were not subject to the separate return limitation year restrictions (SRLY restrictions) of the consolidated return regulations while that target was a member of the selling consolidated group may be applied without limitation to the gains of other targets included in the combined return. If, however, a target has loss carryovers that were subject to the SRLY restrictions while that target was a member of the selling consolidated group, the use of those losses in the combined return continues to be subject to those restrictions, applied in the same manner as if the combined return were a consolidated return. A similar rule applies, when appropriate, to other tax attributes.

(iii) *Procedure for filing a combined return.* A combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all targets required to be included in the combined return. The combined return reflects the deemed asset sales of all targets required to be included in the combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in § 1.1502–75(j) apply for purposes of preparing the combined return. The combined return must include an attachment prominently identified as an ''ELECTION TO FILE A COMBINED RETURN UNDER SECTION 338(h)(15).'' The attachment must—

(A) Contain the name, address, and employer identification number of each target required to be included in the combined return;

(B) Contain the following declaration (or a substantially similar declaration): EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN;

(C) For each target, be signed by a person who states under penalties of perjury that he or she is authorized to act on behalf of such target.

(iv) *Consequences of filing a combined return.* Each target included in a combined return is severally liable for any tax associated with the combined return. See § 1.338–1(b)(3).

(5) *Deemed sale excluded from purchasing corporation's consolidated return.* Old target may not be considered a member of any affiliated group that includes the purchasing corporation with respect to its deemed asset sale.

(6) *Due date for old target's final return*—(i) *General rule.* Old target's final return is generally due on the 15th day of the third calendar month following the month in which the acquisition date occurs. See section 6072 (time for filing income tax returns).

(ii) *Application of § 1.1502–76(c)*—(A) *In general.* Section 1.1502–76(c) applies to old target's final return if old target was a member of a selling group that did not file consolidated returns for the taxable year of the common parent that precedes the year that includes old target's acquisition date. If the selling group has not filed a consolidated return that includes old target's taxable period that ends on the acquisition date, target may, on or before the final return due date (including extensions), either—

(*1*) File a deemed sale return on the assumption that the selling group will file the consolidated return; or

(*2*) File a return for so much of old target's taxable period as ends at the close of the acquisition date on the assumption that the consolidated return will not be filed.

(B) *Deemed extension.* For purposes of applying § 1.1502–76(c)(2), an extension of time to file old target's final return is considered to be in effect until the last date for making the election under section 338.

(C) *Erroneous filing of deemed sale return.* If, under this paragraph (a)(6)(ii), target files a deemed sale return but the selling group does not file a consolidated return, target must file a substituted return for old target not later than the due date (including extensions) for the return of the common parent with which old target would have been included in the consolidated return. The substituted return is for so much of old target's taxable year as ends at the close of the acquisition date. Under § 1.1502–76(c)(2), the deemed sale return is not considered a return for purposes of section 6011 (relating to the general requirement of filing a return) if a substituted return must be filed.

(D) *Erroneous filing of return for regular tax year.* If, under this paragraph (a)(6)(ii), target files a return for so much of old target's regular taxable year as ends at the close of the acquisition date but the selling group files a consolidated return, target must file an amended return for old target not later than the due date (including extensions) for the selling group's consolidated return. (The amended return is a deemed sale return.)

(E) *Last date for payment of tax.* If either a substituted or amended final return of old target is filed under this paragraph (a)(6)(ii), the last date prescribed for payment of tax is the final return due date (as defined in paragraph (a)(6)(i) of this section).

(7) *Examples.* The following examples illustrate this paragraph (a):

Example 1. (i) S is the common parent of a consolidated group that includes T. The S group files calendar year consolidated returns. At the close of June 30 of Year 1, P makes a qualified stock purchase of T from

S. P makes a section 338 election for T, and T's deemed asset sale occurs as of the close of T's acquisition date (June 30).

(ii) T is considered disaffiliated for purposes of reporting the deemed sale tax consequences. Accordingly, T is included in the S group's consolidated return through T's acquisition date except that the tax liability for the deemed sale tax consequences is reported in a separate deemed sale return of T. Provided that T is not treated as an excluded member under section 1563(b)(2), T is a component member of P's controlled group for the taxable year of the deemed asset sale, and the taxable income bracket amounts available in calculating tax on the deemed sale return must be limited accordingly.

(iii) If P purchased the stock of T at 10 a.m. on June 30 of Year 1, the results would be the same. See paragraph (a)(2)(i) of this section.

Example 2. The facts are the same as in *Example 1,* except that the S group does not file consolidated returns. T must file a separate return for its taxable year ending on June 30 of Year 1, which return includes the deemed asset sale.

(b) *Waiver*—(1) *Certain additions to tax.* An addition to tax or additional amount (addition) under subchapter A of chapter 68 of the Internal Revenue Code arising on or before the last day for making the election under section 338 because of circumstances that would not exist but for an election under section 338 is waived if—

(i) Under the particular statute the addition is excusable upon a showing of reasonable cause; and

(ii) Corrective action is taken on or before the last day.

(2) *Notification.* The Internal Revenue Service should be notified at the time of correction (e.g., by attaching a statement to a return that constitutes corrective action) that the waiver rule of this paragraph (b) is being asserted.

(3) *Elections or other actions required to be specified on a timely filed return*—(i) *In general.* If paragraph (b)(1) of this section applies or would apply if there were an underpayment, any election or other action that must be specified on a timely filed return for the taxable period covered by the late filed return described in paragraph (b)(1) of this section is considered timely if specified on a late-filed return filed on or before the last day for making the election under section 338.

(ii) *New target in purchasing corporation's consolidated return.* If new target is includible for its first taxable year in a consolidated return filed by the affiliated group of which the purchasing corporation is a member on or before the last day for making the election under section 338, any election or other action that must be specified in a timely filed return for new target's first taxable year (but which is not specified in the consolidated return) is considered timely if specified in an amended return filed on or before such last day, at the place where the consolidated return was filed.

(4) *Examples.* The following examples illustrate this paragraph (b):

Example 1. T is an unaffiliated corporation with a tax year ending March 31. At the close of September 20 of Year 1, P makes a qualified stock purchase of T. P does not join in filing a consolidated return. P makes a section 338 election for T on or before June 15 of Year 2, which causes T's taxable year to end as of the close of September 20 of Year 1. An income tax return for T's taxable period ending on September 20 of Year 1 was due on December 15 of Year 1. Additions to tax for failure to file a return and to pay tax shown on a return will not be imposed if T's return is filed and the tax paid on or before June 15 of Year 2. (This waiver applies even if the acquisition date coincides with the last day of T's former taxable year, i.e., March 31 of Year 2.) Interest on any underpayment of tax for old T's short taxable year ending September 20 of Year 1 runs from December 15 of Year 1. A statement indicating that the waiver rule of this paragraph is being asserted should be attached to T's return.

Example 2. Assume the same facts as in *Example 1.* Assume further that new T adopts the calendar year by filing, on or before June 15 of Year 2, its first return (for the period beginning on September 21 of Year 1 and ending on December 31 of Year 1) indicating that a calendar year is chosen. See § 1.338–1(b)(1). Any additions to tax or amounts described in this paragraph (b) that arise because of the late filing of a return for the period ending on December 31 of Year 1 are waived, because they are based on circumstances that would not exist but for the section 338 election. Notwithstanding this waiver, however, the return is still considered due March 15 of Year 2, and interest on any underpayment runs from that date.

Example 3. Assume the same facts as in *Example 2,* except that T's former taxable year ends on October 31. Although prior to the election old T had a return due on January 15 of Year 2 for its year ending October 31 of Year 1, that return need not be filed because a timely election under section 338 was made. Instead, old T must file a final return for the period ending on September 20 of Year 1, which is due on December 15 of Year 1.

§ 1.338–10T [Removed]

Par. 6. Section 1.338–10T is removed.

Par. 7. Section 1.338(h)(10)–1 is added to read as follows:

§ 1.338(h)(10)–1 Deemed asset sale and liquidation.

(a) *Scope.* This section prescribes rules for qualification for a section 338(h)(10) election and for making a section 338(h)(10) election. This section also prescribes the consequences of such election. The rules of this section are in addition to the rules of §§ 1.338–1 through 1.338–10 and, in appropriate cases, apply instead of the rules of §§ 1.338–1 through 1.338–10.

(b) *Definitions*—(1) *Consolidated target.* A *consolidated target* is a target that is a member of a consolidated group within the meaning of § 1.1502–1(h) on the acquisition date and is not the common parent of the group on that date.

(2) *Selling consolidated group.* A *selling consolidated group* is the consolidated group of which the consolidated target is a member on the acquisition date.

(3) *Selling affiliate; affiliated target.* A *selling affiliate* is a domestic corporation that owns on the acquisition date an amount of stock in a domestic target, which amount of stock is described in section 1504(a)(2), and does not join in filing a consolidated return with the target. In such case, the target is an *affiliated target.*

(4) *S corporation target.* An *S corporation target* is a target that is an S corporation immediately before the acquisition date.

(5) *S corporation shareholders. S corporation shareholders* are the S corporation target's shareholders. Unless otherwise indicated, a reference to S corporation shareholders refers both to S corporation shareholders who do and those who do not sell their target stock.

(6) *Liquidation.* Any reference in this section to a *liquidation* is treated as a reference to the transfer described in paragraph (d)(4) of this section notwithstanding its ultimate characterization for Federal income tax purposes.

(c) *Section 338(h)(10) election*—(1) *In general.* A section 338(h)(10) election may be made for T if P acquires stock meeting the requirements of section 1504(a)(2) from a selling consolidated group, a selling affiliate, or the S corporation shareholders in a qualified stock purchase.

(2) *Simultaneous joint election requirement.* A section 338(h)(10) election is made jointly by P and the selling consolidated group (or the selling affiliate or the S corporation shareholders) on Form 8023 in accordance with the instructions to the form. S corporation shareholders who do not sell their stock must also consent to the election. The section 338(h)(10) election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(3) *Irrevocability.* A section 338(h)(10) election is irrevocable. If a section 338(h)(10) election is made for T, a

section 338 election is deemed made for T.

(4) *Effect of invalid election.* If a section 338(h)(10) election for T is not valid, the section 338 election for T is also not valid.

(d) *Certain consequences of section 338(h)(10) election.* For purposes of subtitle A of the Internal Revenue Code (except as provided in § 1.338–1(b)(2)), the consequences to the parties of making a section 338(h)(10) election for T are as follows:

(1) *P.* P is automatically deemed to have made a gain recognition election for its nonrecently purchased T stock, if any. The effect of a gain recognition election includes a taxable deemed sale by P on the acquisition date of any nonrecently purchased target stock. See § 1.338–5(d).

(2) *New T.* The AGUB for new T's assets is determined under § 1.338–5 and is allocated among the acquisition date assets under §§ 1.338–6 and 1.338–7. Notwithstanding paragraph (d)(4) of this section (deemed liquidation of old T), new T remains liable for the tax liabilities of old T (including the tax liability for the deemed sale tax consequences). For example, new T remains liable for the tax liabilities of the members of any consolidated group that are attributable to taxable years in which those corporations and old T joined in the same consolidated return. See § 1.1502–6(a).

(3) *Old T—deemed sale*—(i) *In general.* Old T is treated as transferring all of its assets to an unrelated person in exchange for consideration that includes the discharge of its liabilities in a single transaction at the close of the acquisition date (but before the deemed liquidation). See § 1.338–1(a) regarding the tax characterization of the deemed asset sale. Except as provided in § 1.338(h)(10)–1(d)(8) (regarding the installment method), old T recognizes all of the gain realized on the deemed transfer of its assets in consideration for the ADSP. ADSP for old T is determined under § 1.338–4 and allocated among the acquisition date assets under §§ 1.338–6 and 1.338–7. Old T realizes the deemed sale tax consequences from the deemed asset sale before the close of the acquisition date while old T is a member of the selling consolidated group (or owned by the selling affiliate or owned by the S corporation shareholders). If T is an affiliated target, or an S corporation target, the principles of §§ 1.338–2(c)(10) and 1.338–10(a)(1), (5), and (6)(i) apply to the return on which the deemed sale tax consequences are reported. When T is an S corporation target, T's S election continues in effect through the close of the acquisition date (including the time of the deemed asset sale and the deemed liquidation) notwithstanding section 1362(d)(2)(B). Also, when T is an S corporation target (but not a qualified subchapter S subsidiary), any direct and indirect subsidiaries of T which T has elected to treat as qualified subchapter S subsidiaries under section 1361(b)(3) remain qualified subchapter S subsidiaries through the close of the acquisition date.

(ii) *Tiered targets.* In the case of parent-subsidiary chains of corporations making elections under section 338(h)(10), the deemed asset sale of a parent corporation is considered to precede that of its subsidiary. See § 1.338–3(b)(4)(i).

(4) *Old T and selling consolidated group, selling affiliate, or S corporation shareholders—deemed liquidation; tax characterization*—(i) *In general.* Old T is treated as if, before the close of the acquisition date, after the deemed asset sale in paragraph (d)(3) of this section, and while old T is a member of the selling consolidated group (or owned by the selling affiliate or owned by the S corporation shareholders), it transferred all of its assets to members of the selling consolidated group, the selling affiliate, or S corporation shareholders and ceased to exist. The transfer from old T is characterized for Federal income tax purposes in the same manner as if the parties had actually engaged in the transactions deemed to occur because of this section and taking into account other transactions that actually occurred or are deemed to occur. For example, the transfer may be treated as a distribution in pursuance of a plan of reorganization, a distribution in complete cancellation or redemption of all its stock, one of a series of distributions in complete cancellation or redemption of all its stock in accordance with a plan of liquidation, or part of a circular flow of cash. In most cases, the transfer will be treated as a distribution in complete liquidation to which section 336 or 337 applies.

(ii) *Tiered targets.* In the case of parent-subsidiary chains of corporations making elections under section 338(h)(10), the deemed liquidation of a subsidiary corporation is considered to precede the deemed liquidation of its parent.

(5) *Selling consolidated group, selling affiliate, or S corporation shareholders*—(i) *In general.* If T is an S corporation target, S corporation shareholders (whether or not they sell their stock) take their pro rata share of the deemed sale tax consequences into account under section 1366 and increase or decrease their basis in T stock under section 1367. Members of the selling consolidated group, the selling affiliate, or S corporation shareholders are treated as if, after the deemed asset sale in paragraph (d)(3) of this section and before the close of the acquisition date, they received the assets transferred by old T in the transaction described in paragraph (d)(4)(i) of this section. In most cases, the transfer will be treated as a distribution in complete liquidation to which section 331 or 332 applies.

(ii) *Basis and holding period of T stock not acquired.* A member of the selling consolidated group (or the selling affiliate or an S corporation shareholder) retaining T stock is treated as acquiring the stock so retained on the day after the acquisition date for its fair market value. The holding period for the retained stock starts on the day after the acquisition date. For purposes of this paragraph, the fair market value of all of the T stock equals the grossed-up amount realized on the sale to P of P's recently purchased target stock. See § 1.338–4(c).

(iii) *T stock sale.* Members of the selling consolidated group (or the selling affiliate or S corporation shareholders) recognize no gain or loss on the sale or exchange of T stock included in the qualified stock purchase (although they may recognize gain or loss on the T stock in the deemed liquidation).

(6) *Nonselling minority shareholders other than nonselling S corporation shareholders*—(i) *In general.* This paragraph (d)(6) describes the treatment of shareholders of old T other than the following: Members of the selling consolidated group, the selling affiliate, S corporation shareholders (whether or not they sell their stock), and P. For a description of the treatment of S corporation shareholders, see paragraph (d)(5) of this section. A shareholder to which this paragraph (d)(6) applies is called a minority shareholder.

(ii) *T stock sale.* A minority shareholder recognizes gain or loss on the shareholder's sale or exchange of T stock included in the qualified stock purchase.

(iii) *T stock not acquired.* A minority shareholder does not recognize gain or loss under this section with respect to shares of T stock retained by the shareholder. The shareholder's basis and holding period for that T stock is not affected by the section 338(h)(10) election.

(7) *Consolidated return of selling consolidated group.* If P acquires T in a qualified stock purchase from a selling consolidated group—

(i) The selling consolidated group must file a consolidated return for the taxable period that includes the acquisition date;

(ii) A consolidated return for the selling consolidated group for that period may not be withdrawn on or after the day that a section 338(h)(10) election is made for T; and

(iii) Permission to discontinue filing consolidated returns cannot be granted for, and cannot apply to, that period or any of the immediately preceding taxable periods during which consolidated returns continuously have been filed.

(8) *Availability of the section 453 installment method.* Solely for purposes of applying sections 453, 453A, and 453B, and the regulations thereunder (the installment method) to determine the consequences to old T in the deemed asset sale and to old T (and its shareholders, if relevant) in the deemed liquidation, the rules in paragraphs (d)(1) through (7) of this section are modified as follows:

(i) *In deemed asset sale.* Old T is treated as receiving in the deemed asset sale new T installment obligations, the terms of which are identical (except as to the obligor) to P installment obligations issued in exchange for recently purchased stock of T. Old T is treated as receiving in cash all other consideration in the deemed asset sale other than the assumption of, or taking subject to, old T liabilities. For example, old T is treated as receiving in cash any amounts attributable to the grossing-up of amount realized under § 1.338–4(c). The amount realized for recently purchased stock taken into account in determining ADSP is adjusted (and, thus, ADSP is redetermined) to reflect the amounts paid under an installment obligation for the stock when the total payments under the installment obligation are greater or less than the amount realized.

(ii) *In deemed liquidation.* Old T is treated as distributing in the deemed liquidation the new T installment obligations that it is treated as receiving in the deemed asset sale. The members of the selling consolidated group, the selling affiliate, or the S corporation shareholders are treated as receiving in the deemed liquidation the new T installment obligations that correspond to the P installment obligations they actually received individually in exchange for their recently purchased stock. The new T installment obligations may be recharacterized under other rules. See for example § 1.453–11(a)(2) which, in certain circumstances, treats the new T installment obligations deemed distributed by old T as if they were issued by new T in exchange for the stock in old T owned by members of the selling consolidated group, the selling affiliate, or the S corporation shareholders. The members of the selling consolidated group, the selling affiliate, or the S corporation shareholders are treated as receiving all other consideration in the deemed liquidation in cash.

(9) *Treatment consistent with an actual asset sale.* No provision in section 338(h)(10) or this section shall produce a Federal income tax result under subtitle A of the Internal Revenue Code that would not occur if the parties had actually engaged in the transactions deemed to occur because of this section and taking into account other transactions that actually occurred or are deemed to occur. See, however, § 1.338–1(b)(2) for certain exceptions to this rule.

(e) *Examples.* The following examples illustrate the provisions of this section:

Example 1. (i) S1 owns all of the T stock and T owns all of the stock of T1 and T2. S1 is the common parent of a consolidated group that includes T, T1, and T2. P makes a qualified stock purchase of all of the T stock from S1. S1 joins with P in making a section 338(h)(10) election for T and for the deemed purchase of T1. A section 338 election is not made for T2.

(ii) S1 does not recognize gain or loss on the sale of the T stock and T does not recognize gain or loss on the sale of the T1 stock because section 338(h)(10) elections are made for T and T1. Thus, for example, gain or loss realized on the sale of the T or T1 stock is not taken into account in earnings and profits. However, because a section 338 election is not made for T2, T must recognize any gain or loss realized on the deemed sale of the T2 stock. See § 1.338–4(h).

(iii) The results would be the same if S1, T, T1, and T2 are not members of any consolidated group, because S1 and T are selling affiliates.

Example 2. (i) S and T are solvent corporations. S owns all of the outstanding stock of T. S and P agree to undertake the following transaction: T will distribute half its assets to S, and S will assume half of T's liabilities. Then, P will purchase the stock of T from S. S and P will jointly make a section 338(h)(10) election with respect to the sale of T. The corporations then complete the transaction as agreed.

(ii) Under section 338(a), the assets present in T at the close of the acquisition date are deemed sold by old T to new T. Under paragraph (d)(4) of this section, the transactions described in paragraph (d) of this section are treated in the same manner as if they had actually occurred. Because S and P had agreed that, after T's actual distribution to S of part of its assets, S would sell T to P pursuant to an election under section 338(h)(10), and because paragraph (d)(4) of this section deems T subsequently to have transferred all its assets to its shareholder, T is deemed to have adopted a plan of complete liquidation under section 332. T's actual transfer of assets to S is treated as a distribution pursuant to that plan of complete liquidation.

Example 3. (i) S1 owns all of the outstanding stock of both T and S2. All three are corporations. S1 and P agree to undertake the following transaction. T will transfer substantially all of its assets and liabilities to S2, with S2 issuing no stock in exchange therefor, and retaining its other assets and liabilities. Then, P will purchase the stock of T from S1. S1 and P will jointly make a section 338(h)(10) election with respect to the sale of T. The corporations then complete the transaction as agreed.

(ii) Under section 338(a), the remaining assets present in T at the close of the acquisition date are deemed sold by old T to new T. Under paragraph (d)(4) of this section, the transactions described in this section are treated in the same manner as if they had actually occurred. Because old T transferred substantially all of its assets to S2, and is deemed to have distributed all its remaining assets and gone out of existence, the transfer of assets to S2, taking into account the related transfers, deemed and actual, qualifies as a reorganization under section 368(a)(1)(D). Section 361(c)(1) and not section 332 applies to T's deemed liquidation.

Example 4. (i) T owns two assets: an actively traded security (Class II) with a fair market value of $100 and an adjusted basis of $100, and inventory (Class IV) with a fair market value of $100 and an adjusted basis of $100. T has no liabilities. S is negotiating to sell all the stock in T to P for $100 cash and contingent consideration. Assume that under generally applicable tax accounting rules, P's adjusted basis in the T stock immediately after the purchase would be $100, because the contingent consideration is not taken into account. Thus, under the rules of § 1.338–5, AGUB would be $100. Under the allocation rules of § 1.338–6, the entire $100 would be allocated to the Class II asset, the actively traded security, and no amount would be allocated to the inventory. P, however, plans immediately to cause T to sell the inventory, but not the actively traded security, so it requests that, prior to the stock sale, S cause T to create a new subsidiary, Newco, and contribute the actively traded security to the capital of Newco. Because the stock in Newco, which would not be actively traded, is a Class V asset, under the rules of § 1.338–6 $100 of AGUB would be allocated to the inventory and no amount of AGUB would be allocated to the Newco stock. Newco's own AGUB, $0 under the rules of § 1.338–5, would be allocated to the actively traded security. When P subsequently causes T to sell the inventory, T would realize no gain or loss instead of realizing gain of $100.

(ii) Assume that, if the T stock had not itself been sold but T had instead sold both its inventory and the Newco stock to P, T would for tax purposes be deemed instead to have sold both its inventory and actively traded security directly to P, with P deemed then to have created Newco and contributed the actively traded security to the capital of Newco. Section 338, if elected, generally recharacterizes a stock sale as a deemed sale

of assets. However, paragraph (d)(9) of this section states, in general, that no provision of section 338(h)(10) or the regulations thereunder shall produce a Federal income tax result under subtitle A of the Internal Revenue Code that would not occur if the parties had actually engaged in the transactions deemed to occur by virtue of the section 338(h)(10) election, taking into account other transactions that actually occurred or are deemed to occur. Hence, the deemed sale of assets under section 338(h)(10) should be treated as one of the inventory and actively traded security themselves, not of the inventory and Newco stock. The anti-abuse rule of § 1.338–1(c) does not apply, because the substance of the deemed sale of assets is a sale of the inventory and the actively traded security themselves, not of the inventory and the Newco stock. Otherwise, the anti-abuse rule might apply.

Example 5. (i) T, a member of a selling consolidated group, has only one class of stock, all of which is owned by S1. On March 1 of Year 2, S1 sells its T stock to P for $80,000, and joins with P in making a section 338(h)(10) election for T. There are no selling costs or acquisition costs. On March 1 of Year 2, T owns land with a $50,000 basis and $75,000 fair market value and equipment with a $30,000 adjusted basis, $70,000 recomputed basis, and $60,000 fair market value. T also has a $40,000 liability. S1 pays old T's allocable share of the selling group's consolidated tax liability for Year 2 including the tax liability for the deemed sale tax consequences (a total of $13,600).

(ii) ADSP of $120,000 ($80,000 + $40,000 + 0) is allocated to each asset as follows:

Assets	Basis	FMV	Fraction	Allocable ADSP
Land	$50,000	$75,000	5/9	$66,667
Equipment	30,000	60,000	4/9	53,333
Total	80,000	135,000	1	120,000

(iii) Under paragraph (d)(3) of this section, old T has gain on the deemed sale of $40,000 (consisting of $16,667 of capital gain and $23,333 of ordinary income).

(iv) Under paragraph (d)(5)(iii) of this section, S1 recognizes no gain or loss upon its sale of the old T stock to P. S1 also recognizes no gain or loss upon the deemed liquidation of T. See paragraph (d)(4) of this section and section 332.

(v) P's basis in new T stock is P's cost for the stock, $80,000. See section 1012.

(vi) Under § 1.338–5, the AGUB for new T is $120,000, i.e., P's cost for the old T stock ($80,000) plus T's liability ($40,000). This AGUB is allocated as basis among the new T assets under §§ 1.338–6 and 1.338–7.

Example 6. (i) The facts are the same as in *Example 5,* except that S1 sells 80 percent of the old T stock to P for $64,000, rather than 100 percent of the old T stock for $80,000.

(ii) The consequences to P, T, and S1 are the same as in *Example 5,* except that:

(A) P's basis for its 80-percent interest in the new T stock is P's $64,000 cost for the stock. See section 1012.

(B) Under § 1.338–5, the AGUB for new T is $120,000 (i.e., $64,000/.8 + $40,000 + $0).

(C) Under paragraph (d)(4) of this section, S1 recognizes no gain or loss with respect to the retained stock in T. See section 332.

(D) Under paragraph (d)(5)(ii) of this section, the basis of the T stock retained by S1 is $16,000 (i.e., $120,000 − $40,000 (the ADSP amount for the old T assets over the sum of new T's liabilities immediately after the acquisition date) '' .20 (the proportion of T stock retained by S1)).

Example 7. (i) The facts are the same as in *Example 6,* except that K, a shareholder unrelated to T or P, owns the 20 percent of the T stock that is not acquired by P in the qualified stock purchase. K's basis in its T stock is $5,000.

(ii) The consequences to P, T, and S1 are the same as in *Example 6.*

(iii) Under paragraph (d)(6)(iii) of this section, K recognizes no gain or loss, and K's basis in its T stock remains at $5,000.

Example 8. (i) The facts are the same as in *Example 5,* except that the equipment is held by T1, a wholly-owned subsidiary of T, and a section 338(h)(10) election is also made for T1. The T1 stock has a fair market value of $60,000. T1 has no assets other than the equipment and no liabilities. S1 pays old T's and old T1's allocable shares of the selling group's consolidated tax liability for Year 2 including the tax liability for T and T1's deemed sale tax consequences.

(ii) ADSP for T is $120,000, allocated $66,667 to the land and $53,333 to the stock. Old T's deemed sale results in $16,667 of capital gain on its deemed sale of the land. Under paragraph (d)(5)(iii) of this section, old T does not recognize gain or loss on its deemed sale of the T1 stock. See section 332.

(iii) ADSP for T1 is $53,333 (i.e., $53,333 + $0 + $0). On the deemed sale of the equipment, T1 recognizes ordinary income of $23,333.

(iv) Under paragraph (d)(5)(iii) of this section, S1 does not recognize gain or loss upon its sale of the old T stock to P.

Example 9. (i) The facts are the same as in *Example 8,* except that P already owns 20 percent of the T stock, which is nonrecently purchased stock with a basis of $6,000, and that P purchases the remaining 80 percent of the T stock from S1 for $64,000.

(ii) The results are the same as in *Example 8,* except that under paragraph (d)(1) of this section and § 1.338–5(d), P is deemed to have made a gain recognition election for its nonrecently purchased T stock. As a result, P recognizes gain of $10,000 and its basis in the nonrecently purchased T stock is increased from $6,000 to $16,000. P's basis in all the T stock is $80,000 (i.e., $64,000 + $16,000). The computations are as follows:

(A) P's grossed-up basis for the recently purchased T stock is $64,000 (i.e., $64,000 (the basis of the recently purchased T stock) × (1 − .2)/(.8) (the fraction in section 338(b)(4))).

(B) P's basis amount for the nonrecently purchased T stock is $16,000 (i.e., $64,000 (the grossed-up basis in the recently purchased T stock) × (.2)/(1.0 − .2) (the fraction in section 338(b)(3)(B))).

(C) The gain recognized on the nonrecently purchased stock is $10,000 (i.e., $16,000 − $6,000).

Example 10. (i) T is an S corporation whose sole class of stock is owned 40 percent each by A and B and 20 percent by C. T, A, B, and C all use the cash method of accounting. A and B each has an adjusted basis of $10,000 in the stock. C has an adjusted basis of $5,000 in the stock. A, B, and C hold no installment obligations to which section 453A applies. On March 1 of Year 1, A sells its stock to P for $40,000 in cash and B sells its stock to P for a $25,000 note issued by P and real estate having a fair market value of $15,000. The $25,000 note, due in full in Year 7, is not publicly traded and bears adequate stated interest. A and B have no selling expenses. T's sole asset is real estate, which has a value of $110,000 and an adjusted basis of $35,000. Also, T's real estate is encumbered by long-outstanding purchase-money indebtedness of $10,000. The real estate does not have built-in gain subject to section 1374. A, B, and C join with P in making a section 338(h)(10) election for T.

(ii) Solely for purposes of application of sections 453, 453A, and 453B, old T is considered in its deemed asset sale to receive back from new T the $25,000 note (considered issued by new T) and $75,000 of cash (total consideration of $80,000 paid for all the stock sold, which is then divided by .80 in the grossing-up, with the resulting figure of $100,000 then reduced by the amount of the installment note). Absent an election under section 453(d), gain is reported by old T under the installment method.

(iii) In applying the installment method to old T's deemed asset sale, the contract price for old T's assets deemed sold is $100,000, the $110,000 selling price reduced by the indebtedness of $10,000 to which the assets are subject. (The $110,000 selling price is itself the sum of the $80,000 grossed-up in paragraph (ii) above to $100,000 and the $10,000 liability.) Gross profit is $75,000 ($110,000 selling price − old T's basis of $35,000). Old T's gross profit ratio is 0.75 (gross profit of $75,000 ÷ $100,000 contract price). Thus, $56,250 (0.75 × the $75,000 cash old T is deemed to receive in Year 1) is Year 1 gain attributable to the sale, and $18,750 ($75,000 − $56,250) is recovery of basis.

(iv) In its liquidation, old T is deemed to distribute the $25,000 note to B, since B actually sold the stock partly for that

consideration. To the extent of the remaining liquidating distribution to B, it is deemed to receive, along with A and C, the balance of old T's liquidating assets in the form of cash. Under section 453(h), B, unless it makes an election under section 453(d), is not required to treat the receipt of the note as a payment for the T stock; P's payment of the $25,000 note in Year 7 to B is a payment for the T stock. Because section 453(h) applies to B, old T's deemed liquidating distribution of the note is, under section 453B(h), not treated as a taxable disposition by old T.

(v) Under section 1366, A reports 40 percent, or $22,500, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases A's $10,000 adjusted basis in the T stock to $32,500. Next, in old T's deemed liquidation, A is considered to receive $40,000 for its old T shares, causing it to recognize an additional $7,500 gain in Year 1.

(vi) Under section 1366, B reports 40 percent, or $22,500, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases B's $10,000 adjusted basis in its T stock to $32,500. Next, in old T's deemed liquidation, B is considered to receive the $25,000 note and $15,000 of other consideration. Applying section 453, including section 453(h), to the deemed liquidation, B's selling price and contract price are both $40,000. Gross profit is $7,500 ($40,000 selling price − B's basis of $32,500). B's gross profit ratio is 0.1875 (gross profit of $7,500 ÷ $40,000 contract price). Thus, $2,812.50 (0.1875 × $15,000) is Year 1 gain attributable to the deemed liquidation. In Year 7, when the $25,000 note is paid, B has $4,687.50 (0.1875 × $25,000) of additional gain.

(vii) Under section 1366, C reports 20 percent, or $11,250, of old T's $56,250 gain recognized in Year 1. Under section 1367, this increases C's $5,000 adjusted basis in its T stock to $16,250. Next, in old T's deemed liquidation, C is considered to receive $20,000 for its old T shares, causing it to recognize an additional $3,750 gain in Year 1. Finally, under paragraph (d)(5)(ii) of this section, C is considered to acquire its stock in T on the day after the acquisition date for $20,000 (fair market value = grossed-up amount realized of $100,000 × 20%). C's holding period in the stock deemed received in new T begins at that time.

(f) *Inapplicability of provisions.* The provisions of section 6043, § 1.331–1(d), and § 1.332–6 (relating to information returns and recordkeeping requirements for corporate liquidations) do not apply to the deemed liquidation of old T under paragraph (d)(4) of this section.

(g) *Required information.* The Commissioner may exercise the authority granted in section 338(h)(10)(C)(iii) to require provision of any information deemed necessary to carry out the provisions of section 338(h)(10) by requiring submission of information on any tax reporting form.

§ 1.338(h)(10)–1T [Removed]

Par. 8. Section 1.338(h)(10)–1T is removed.

Par. 9. Section 1.338(i)–1 is added to read as follows:

§ 1.338(i)–1 Effective dates.

(a) *In general.* The provisions of §§ 1.338–1 through 1.338–7, 1.338–10 and 1.338(h)(10)–1 apply to any qualified stock purchase occurring after March 15, 2001. For rules applicable to qualified stock purchases on or before March 15, 2001, see §§ 1.338–1T through 1.338–7T, 1.338–10T, 1.338(h)(10)–1T and 1.338(i)–1T in effect prior to March 16, 2001 (see 26 CFR part 1 revised April 1, 2000).

(b) *Section 338(h)(10) elections for S corporation targets.* The requirements of §§ 1.338(h)(10)–1T(c)(2) and 1.338(h)(10)–1(c)(2) that S corporation shareholders who do not sell their stock must also consent to an election under section 338(h)(10) will not invalidate an otherwise valid election made on the September 1997 revision of Form 8023, ''Elections Under Section 338 For Corporations Making Qualified Stock Purchases,'' not signed by the nonselling shareholders, provided that the S corporation and all of its shareholders (including nonselling shareholders) report the tax consequences consistently with the results under section 338(h)(10).

§ 1.338(i)–1T [Removed]

Par. 10. Section 1.338(i)–1T is removed.

Par. 11. Section 1.1060–1 is added to read as follows:

§ 1.1060–1 Special allocation rules for certain asset acquisitions.

(a) *Scope*—(1) *In general.* This section prescribes rules relating to the requirements of section 1060, which, in the case of an applicable asset acquisition, requires the transferor (the seller) and the transferee (the purchaser) each to allocate the consideration paid or received in the transaction among the assets transferred in the same manner as amounts are allocated under section 338(b)(5) (relating to the allocation of adjusted grossed-up basis among the assets of the target corporation when a section 338 election is made). In the case of an applicable asset acquisition described in paragraph (b)(1) of this section, sellers and purchasers must allocate the consideration under the residual method as described in §§ 1.338–6 and 1.338–7 in order to determine, respectively, the amount realized from, and the basis in, each of the transferred assets. For rules relating to distributions of partnership property or transfers of partnership interests which are subject to section 1060(d), see § 1.755–2T.

(2) *Effective date.* The provisions of this section apply to any asset acquisition occurring after March 15, 2001. For rules applicable to asset acquisitions on or before March 15, 2001, see § 1.1060–1T in effect prior to March 16, 2001 (see 26 CFR part 1 revised April 1, 2000).

(3) *Outline of topics.* In order to facilitate the use of this section, this paragraph (a)(3) lists the major paragraphs in this section as follows:

(a) Scope.
(1) In general.
(2) Effective date.
(3) Outline of topics.
(b) Applicable asset acquisition.
(1) In general.
(2) Assets constituting a trade or business.
(i) In general.
(ii) Goodwill or going concern value.
(iii) Factors indicating goodwill or going concern value.
(3) Examples.
(4) Asymmetrical transfers of assets.
(5) Related transactions.
(6) More than a single trade or business.
(7) Covenant entered into by the seller.
(8) Partial non-recognition exchanges.
(c) Allocation of consideration among assets under the residual method.
(1) Consideration.
(2) Allocation of consideration among assets.
(3) Certain costs.
(4) Effect of agreement between parties.
(d) Examples.
(e) Reporting requirements.
(1) Applicable asset acquisitions.
(i) In general.
(ii) Time and manner of reporting.
(A) In general.
(B) Additional reporting requirement.
(2) Transfers of interests in partnerships.

(b) *Applicable asset acquisition*—(1) *In general.* An applicable asset acquisition is any transfer, whether direct or indirect, of a group of assets if the assets transferred constitute a trade or business in the hands of either the seller or the purchaser and, except as provided in paragraph (b)(8) of this section, the purchaser's basis in the transferred assets is determined wholly by reference to the purchaser's consideration.

(2) *Assets constituting a trade or business*—(i) *In general.* For purposes of this section, a group of assets constitutes a trade or business if—

(A) The use of such assets would constitute an active trade or business under section 355; or

(B) Its character is such that goodwill or going concern value could under any circumstances attach to such group.

(ii) *Goodwill or going concern value.* Goodwill is the value of a trade or business attributable to the expectancy of continued customer patronage. This expectancy may be due to the name or reputation of a trade or business or any

other factor. Going concern value is the additional value that attaches to property because of its existence as an integral part of an ongoing business activity. Going concern value includes the value attributable to the ability of a trade or business (or a part of a trade or business) to continue functioning or generating income without interruption notwithstanding a change in ownership. It also includes the value that is attributable to the immediate use or availability of an acquired trade or business, such as, for example, the use of the revenues or net earnings that otherwise would not be received during any period if the acquired trade or business were not available or operational.

(iii) *Factors indicating goodwill or going concern value.* In making the determination in this paragraph (b)(2), all the facts and circumstances surrounding the transaction are taken into account. Whether sufficient consideration is available to allocate to goodwill or going concern value after the residual method is applied is not relevant in determining whether goodwill or going concern value could attach to a group of assets. Factors to be considered include—

(A) The presence of any intangible assets (whether or not those assets are section 197 intangibles), provided, however, that the transfer of such an asset in the absence of other assets will not be a trade or business for purposes of section 1060;

(B) The existence of an excess of the total consideration over the aggregate book value of the tangible and intangible assets purchased (other than goodwill and going concern value) as shown in the financial accounting books and records of the purchaser; and

(C) Related transactions, including lease agreements, licenses, or other similar agreements between the purchaser and seller (or managers, directors, owners, or employees of the seller) in connection with the transfer.

(3) *Examples.* The following examples illustrate paragraphs (b)(1) and (2) of this section:

Example 1. S is a high grade machine shop that manufactures microwave connectors in limited quantities. It is a successful company with a reputation within the industry and among its customers for manufacturing unique, high quality products. Its tangible assets consist primarily of ordinary machinery for working metal and plating. It has no secret formulas or patented drawings of value. P is a company that designs, manufactures, and markets electronic components. It wants to establish an immediate presence in the microwave industry, an area in which it previously has not been engaged. P is acquiring assets of a number of smaller companies and hopes that these assets will collectively allow it to offer a broad product mix. P acquires the assets of S in order to augment its product mix and to promote its presence in the microwave industry. P will not use the assets acquired from S to manufacture microwave connectors. The assets transferred are assets that constitute a trade or business in the hands of the seller. Thus, P's purchase of S's assets is an applicable asset acquisition. The fact that P will not use the assets acquired from S to continue the business of S does not affect this conclusion.

Example 2. S, a sole proprietor who operates a car wash, both leases the building housing the car wash and sells all of the car wash equipment to P. S's use of the building and the car wash equipment constitute a trade or business. P begins operating a car wash in the building it leases from S. Because the assets transferred together with the asset leased are assets which constitute a trade or business, P's purchase of S's assets is an applicable asset acquisition.

Example 3. S, a corporation, owns a retail store business in State X and conducts activities in connection with that business enterprise that meet the active trade or business requirement of section 355. P is a minority shareholder of S. S distributes to P all the assets of S used in S's retail business in State X in complete redemption of P's stock in S held by P. The distribution of S's assets in redemption of P's stock is treated as a sale or exchange under sections 302(a) and 302(b)(3), and P's basis in the assets distributed to it is determined wholly by reference to the consideration paid, the S stock. Thus, S's distribution of assets constituting a trade or business to P is an applicable asset acquisition.

Example 4. S is a manufacturing company with an internal financial bookkeeping department. P is in the business of providing a financial bookkeeping service on a contract basis. As part of an agreement for P to begin providing financial bookkeeping services to S, P agrees to buy all of the assets associated with S's internal bookkeeping operations and provide employment to any of S's bookkeeping department employees who choose to accept a position with P. In addition to selling P the assets associated with its bookkeeping operation, S will enter into a long term contract with P for bookkeeping services. Because assets transferred from S to P, along with the related contract for bookkeeping services, are a trade or business in the hands of P, the sale of the bookkeeping assets from S to P is an applicable asset acquisition.

(4) *Asymmetrical transfers of assets.* A purchaser is subject to section 1060 if—

(i) Under general principles of tax law, the seller is not treated as transferring the same assets as the purchaser is treated as acquiring;

(ii) The assets acquired by the purchaser constitute a trade or business; and

(iii) Except as provided in paragraph (b)(8) of this section, the purchaser's basis in the transferred assets is determined wholly by reference to the purchaser's consideration.

(5) *Related transactions.* Whether the assets transferred constitute a trade or business is determined by aggregating all transfers from the seller to the purchaser in a series of related transactions. Except as provided in paragraph (b)(8) of this section, all assets transferred from the seller to the purchaser in a series of related transactions are included in the group of assets among which the consideration paid or received in such series is allocated under the residual method. The principles of § 1.338–1(c) are also applied in determining which assets are included in the group of assets among which the consideration paid or received is allocated under the residual method.

(6) *More than a single trade or business.* If the assets transferred from a seller to a purchaser include more than one trade or business, then, in applying this section, all of the assets transferred (whether or not transferred in one transaction or a series of related transactions and whether or not part of a trade or business) are treated as a single trade or business.

(7) *Covenant entered into by the seller.* If, in connection with an applicable asset acquisition, the seller enters into a covenant (e.g., a covenant not to compete) with the purchaser, that covenant is treated as an asset transferred as part of a trade or business.

(8) *Partial non-recognition exchanges.* A transfer may constitute an applicable asset acquisition notwithstanding the fact that no gain or loss is recognized with respect to a portion of the group of assets transferred. All of the assets transferred, including the non-recognition assets, are taken into account in determining whether the group of assets constitutes a trade or business. The allocation of consideration under paragraph (c) of this section is done without taking into account either the non-recognition assets or the amount of money or other property that is treated as transferred in exchange for the non-recognition assets (together, the non-recognition exchange property). The basis in and gain or loss recognized with respect to the non-recognition exchange property are determined under such rules as would otherwise apply to an exchange of such property. The amount of the money and other property treated as exchanged for non-recognition assets is the amount by which the fair market value of the non-recognition assets transferred by one party exceeds the fair market value of the non-recognition assets transferred by the other (to the extent of the money

and the fair market value of property transferred in the exchange). The money and other property that are treated as transferred in exchange for the non-recognition assets (and which are not included among the assets to which section 1060 applies) are considered to come from the following assets in the following order: first from Class I assets, then from Class II assets, then from Class III assets, then from Class IV assets, then from Class V assets, then from Class VI assets, and then from Class VII assets. For this purpose, liabilities assumed (or to which a non-recognition exchange property is subject) are treated as Class I assets. See *Example 1* in paragraph (d) of this section for an example of the application of section 1060 to a single transaction which is, in part, a non-recognition exchange.

(c) *Allocation of consideration among assets under the residual method*—(1) *Consideration.* The seller's consideration is the amount, in the aggregate, realized from selling the assets in the applicable asset acquisition under section 1001(b). The purchaser's consideration is the amount, in the aggregate, of its cost of purchasing the assets in the applicable asset acquisition that is properly taken into account in basis.

(2) *Allocation of consideration among assets.* For purposes of determining the seller's amount realized for each of the assets sold in an applicable asset acquisition, the seller allocates consideration to all the assets sold by using the residual method under §§ 1.338–6 and 1.338–7, substituting consideration for ADSP. For purposes of determining the purchaser's basis in each of the assets purchased in an applicable asset acquisition, the purchaser allocates consideration to all the assets purchased by using the residual method under §§ 1.338–6 and 1.338–7, substituting consideration for AGUB. In allocating consideration, the rules set forth in paragraphs (c)(3) and (4) of this section apply in addition to the rules in §§ 1.338–6 and 1.338–7.

(3) *Certain costs.* The seller and purchaser each adjusts the amount allocated to an individual asset to take into account the specific identifiable costs incurred in transferring that asset in connection with the applicable asset acquisition (e.g., real estate transfer costs or security interest perfection costs). Costs so allocated increase, or decrease, as appropriate, the total consideration that is allocated under the residual method. No adjustment is made to the amount allocated to an individual asset for general costs associated with the applicable asset acquisition as a whole or with groups of assets included therein (e.g., non-specific appraisal fees or accounting fees). These latter amounts are taken into account only indirectly through their effect on the total consideration to be allocated.

(4) *Effect of agreement between parties.* If, in connection with an applicable asset acquisition, the seller and purchaser agree in writing as to the allocation of any amount of consideration to, or as to the fair market value of, any of the assets, such agreement is binding on them to the extent provided in this paragraph (c)(4). Nothing in this paragraph (c)(4) restricts the Commissioner's authority to challenge the allocations or values arrived at in an allocation agreement. This paragraph (c)(4) does not apply if the parties are able to refute the allocation or valuation under the standards set forth in *Commissioner* v. *Danielson*, 378 F.2d 771 (3d Cir.), *cert. denied*, 389 U.S. 858 (1967) (a party wishing to challenge the tax consequences of an agreement as construed by the Commissioner must offer proof that, in an action between the parties to the agreement, would be admissible to alter that construction or show its unenforceability because of mistake, undue influence, fraud, duress, etc.).

(d) *Examples.* The following examples illustrate this section:

Example 1. (i) On January 1, 2001, A transfers assets X, Y, and Z to B in exchange for assets D, E, and F plus $1,000 cash.

(ii) Assume the exchange of assets constitutes an exchange of like-kind property to which section 1031 applies. Assume also that goodwill or going concern value could under any circumstances attach to each of the DEF and XYZ groups of assets and, therefore, each group constitutes a trade or business under section 1060.

(iii) Assume the fair market values of the assets and the amount of money transferred are as follows:

Asset	Fair market value
By A:	
X	$ 400
Y	400
Z	200
Total	1,000
By B:	
D	40
E	30
F	30
Cash (amount)	1,000
Total	1,100

(iv) Under paragraph (b)(8) of this section, for purposes of allocating consideration under paragraph (c) of this section, the like-kind assets exchanged and any money or other property that are treated as transferred in exchange for the like-kind property are excluded from the application of section 1060.

(v) Since assets X, Y, and Z are like-kind property, they are excluded from the application of the section 1060 allocation rules.

(vi) Since assets D, E, and F are like-kind property, they are excluded from the application of the section 1060 allocation rules. Thus, the allocation rules of section 1060 do not apply in determining B's gain or loss with respect to the disposition of assets D, E, and F, and the allocation rules of section 1060 and paragraph (c) of this section are not applied to determine A's bases of assets D, E, and F. In addition, $900 of the $1,000 cash B gave to A for A's like-kind assets (X, Y, and Z) is treated as transferred in exchange for the like-kind property in order to equalize the fair market values of the like-kind assets. Therefore, $900 of the cash is excluded from the application of the section 1060 allocation rules.

(vii) $100 of the cash is allocated under section 1060 and paragraph (c) of this section.

(viii) A received $100 that must be allocated under section 1060 and paragraph (c) of this section. Since A transferred no Class I, II, III, IV, V, or VI assets to which section 1060 applies, in determining its amount realized for the part of the exchange to which section 1031 does not apply, the $100 is allocated to Class VII assets (goodwill and going concern value).

(ix) B gave A $100 that must be allocated under section 1060 and paragraph (c) of this section. Since B received from A no Class I, II, III, IV, V, or VI assets to which section 1060 applies, the $100 consideration is allocated by B to Class VII assets (goodwill and going concern value).

Example 2. (i) On January 1, 2001, S, a sole proprietor, sells to P, a corporation, a group of assets that constitutes a trade or business under paragraph (b)(2) of this section. S, who plans to retire immediately, also executes in P's favor a covenant not to compete. P pays S $3,000 in cash and assumes $1,000 in liabilities. Thus, the total consideration is $4,000.

(ii) On the purchase date, P and S also execute a separate agreement that states that the fair market values of the Class II, Class III, Class V, and Class VI assets S sold to P are as follows:

Asset class	Asset	Fair market value
II	Actively traded securities	$500
	Total Class II	500
III	Accounts receivable	200
	Total Class III	200
V	Furniture and fixtures	800
	Building	800
	Land	200

Asset class	Asset	Fair market value
	Equipment	400
	Total Class V	2,200
VI	Covenant not to compete	900
	Total Class VI	900

(iii) P and S each allocate the consideration in the transaction among the assets transferred under paragraph (c) of this section in accordance with the agreed upon fair market values of the assets, so that $500 is allocated to Class II assets, $200 is allocated to the Class III asset, $2,200 is allocated to Class V assets, $900 is allocated to Class VI assets, and $200 ($4,000 total consideration less $3,800 allocated to assets in Classes II, III, V, and VI) is allocated to the Class VII assets (goodwill and going concern value).

(iv) In connection with the examination of P's return, the Commissioner, in determining the fair market values of the assets transferred, may disregard the parties' agreement. Assume that the Commissioner correctly determines that the fair market value of the covenant not to compete was $500. Since the allocation of consideration among Class II, III, V, and VI assets results in allocation up to the fair market value limitation, the $600 of unallocated consideration resulting from the Commissioner's redetermination of the value of the covenant not to compete is allocated to Class VII assets (goodwill and going concern value).

(e) *Reporting requirements*—(1) *Applicable asset acquisitions*—(i) *In general.* Unless otherwise excluded from this requirement by the Commissioner, the seller and the purchaser in an applicable asset acquisition each must report information concerning the amount of consideration in the transaction and its allocation among the assets transferred. They also must report information concerning subsequent adjustments to consideration.

(ii) *Time and manner of reporting*—(A) *In general.* The seller and the purchaser each must file asset acquisition statements on Form 8594, ''Asset Allocation Statement,'' with their income tax returns or returns of income for the taxable year that includes the first date assets are sold pursuant to an applicable asset acquisition. This reporting requirement applies to all asset acquisitions described in this section. For reporting requirements relating to asset acquisitions occurring before March 16, 2001, as described in paragraph (a)(2) of this section, see the temporary regulations under section 1060 in effect prior to March 16, 2001 (see 26 CFR part 1 revised April 1, 2000).

(B) *Additional reporting requirement.* When an increase or decrease in consideration is taken into account after the close of the first taxable year that includes the first date assets are sold in an applicable asset acquisition, the seller and the purchaser each must file a supplemental asset acquisition statement on Form 8594 with the income tax return or return of income for the taxable year in which the increase (or decrease) is properly taken into account.

(2) *Transfers of interests in partnerships.* For reporting requirements relating to the transfer of a partnership interest, see § 1.755–2T(c).

§ 1.1060–1T [Removed]

Par. 12. Section 1.1060–1T is removed.

Par. 13. Section 1.1361–1 is amended as follows:

1. Redesignate paragraph (l)(2)(v) as paragraph (l)(2)(vi).

2. Add a new paragraph (l)(2)(v). The addition reads as follows:

§ 1.1361–1 S corporation defined.

* * * * *

(l) * * *

(2) * * *

(v) *Special rule for section 338(h)(10) elections.* If the shareholders of an S corporation sell their stock in a transaction for which an election is made under section 338(h)(10) and § 1.338(h)(10)–1, the receipt of varying amounts per share by the shareholders will not cause the S corporation to have more than one class of stock, provided that the varying amounts are determined in arm's length negotiations with the purchaser.

* * * * *

Par. 14. Section 1.1361–4 is amended by removing the last two sentences of paragraph (b)(4) and adding three sentences to read as follows:

§ 1.1361–4 Effect of QSub election.

* * * * *

(b) * * *

(4) *Coordination with section 338 election.* * * * If an S corporation makes an election under section 338 (without a section 338(h)(10) election) with respect to a target, the target must file a final return as a C corporation reflecting the deemed sale. See § 1.338–10(a). If the target was an S corporation on the day before the acquisition date, the final return as a C corporation must reflect the activities of the target for the acquisition date, including the deemed sale. See § 1.338–10(a)(3).

* * * * *

Par. 15. Section 1.1502–76 is amended by adding a parenthetical at the end of paragraph (b)(1)(ii)(B)(3) and before the semicolon to read as follows:

§ 1.1502–76 Taxable year of members of group.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) * * *

(3) * * * (but see § 1.338–1(d)) * * *

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER PAPERWORK REDUCTION ACT

Par. 16. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 17. In § 602.101, paragraph (b) is amended by removing the entries for §§ 1.338–2T, 1.338–5T, 1.338–10T, 1.338(h)(10)–1T, and 1.1060–1T from the table and adding new entries to the table in numerical order to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	*
1.338–2	1545–1658
1.338–5	1545–1658
1.338–10	1545–1658
1.338(h)(10)–1	1545–1658
* * * *	*
1.1060–1	1545–1658
* * * *	*

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 4, 2001.

Jonathan Talisman,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 01–981 Filed 2–12–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8943]

RIN 1545–AY51

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to additions to the list of items of information disclosed to the Bureau of the Census for use in the Longitudinal Employer-Household Dynamics (LEHD) project and the Survey of Income and Program Participation (SIPP) project. These regulations provide guidance to IRS and Social Security Administration (SSA) personnel responsible for disclosing the information. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective February 13, 2001.

Applicability Date: For dates of applicability, see § 301.6103(j)(1)–1T(e) of these regulations.

FOR FURTHER INFORMATION CONTACT: Stuart Murray, (202) 622–4580 (not a toll-free number).

Background

Under section 6103(j)(1), upon written request from the Secretary of Commerce, the Secretary is to furnish to the Bureau of the Census (Bureau) tax return information that is prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring censuses and national economic accounts and conducting related statistical activities authorized by law. Section 301.6103(j)(1)–1 of the regulations further defines such purposes by reference to 13 U.S.C. Chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes. Section 301.6103(j)(1)–1(b)(5) of the regulations provides a list of information provided to the Social Security Administration (SSA) pursuant to Internal Revenue Code section 6103(l)(1)(A) or (5) that officers or employees of SSA may disclose to the Bureau. Periodically, the disclosure regulations are amended to reflect the changing needs of the Bureau for data for its statutorily authorized statistical activities.

This document adopts temporary regulations that authorize IRS and SSA personnel to disclose the additional items of return information that have been requested by the Secretary of Commerce for specified purposes related to the LEHD and SIPP projects.

Except for § 301.6103(j)(1)–1T(b)(2)(v) and (vi); (b)(3)(xxiii), (xxiv),(xxv), (xxvi), (xxvii) and (xxviii); and (b)(5)(iii) , (iv), and (v); the text of the temporary regulations is the same as 26 CFR 301.6103(j)(1)–1. The changes made by § 301.6103(j)(1)–1T(b)(2)(v) and (vi); (b)(3)(xxiii), (xxiv), (xxv), (xxvi), (xxvii) and (xxviii); and (b)(5)(iii), (iv), and (v); are discussed below.

Explanation of Provisions

By letter dated March 27, 2000, the Secretary of Commerce requested that additional items of return information be disclosed to the Bureau for purposes related to the Longitudinal Employer-Household Dynamics (LEHD) project. The request indicates that the Bureau is ready to begin a joint project with SSA to develop data files that contain linked information, matching selected worker and employer records for statistical research, in order to improve programs at the Bureau and SSA. The linked information will come from the Bureau's demographic and economic censuses and surveys, the Bureau's Standard Statistical Establishment List (SSEL), which includes business tax information, and SSA's administrative records. The Bureau's component of this project, the LEHD project, will enable the Bureau to conduct studies that are intended to improve the quality of the Bureau's core demographic and economic censuses and surveys, which are Bureau activities authorized under 13 U.S.C. Chapter 5.

The Bureau has specifically requested information from SSA's Master Earnings File (MEF), which contains information from IRS Form W–2 and Form 1040SE. The IRS information contained in SSA's MEF will permit the Bureau to link employee data with employer data. The Bureau has requested Social Security Numbers (SSNs) and Employer Identification Numbers (EINs) to link the employee and employer data.

The Bureau has also requested the disclosure of wages, tips, and other compensation and deferred wages from the Form W–2. The Bureau indicated that it wants this detailed earnings record information because it is provided separately for each employer of the employee; it covers all persons with wages, including nonfilers and other non-covered employees; and it provides specific information on deferred compensation, such as retirement contributions.

By letter dated August 2, 2000, the Secretary of Commerce requested additional items of information for purposes related to the Bureau's Survey of Income and Program Participation (SIPP) demographic survey. This request indicates that the Bureau and SSA want to ensure that the regulations authorize the continuation of a joint project to develop data files that contain linked information from the SIPP with information from SSA's Master Earnings File. The linkage of Census survey information on family relationships with SSA's earnings histories allows for the study and assessment of welfare and social security/retirement proposals. Specifically, the Bureau intends to improve the quality of the SIPP by adding a series of projected Primary Insurance Amounts (PIAs) to the public-use version of each available SIPP.

In order to adjust for misreported data related to earnings, employment, and pensions from the Bureau's SIPP, the Bureau also requested data from Forms W–2 and 1099R or data derived from these forms. Some of the information requested for LEHD is also requested for SIPP, such as the social security number; employer identification number; wages, tips and other compensation; and deferred wages.

As provided in the Commissioner of Internal Revenue's responses to the LEHD and SIPP requests dated September 25, 2000, and October 27, 2000, respectively, information will be furnished under these temporary regulations only for the purposes of conducting the LEHD project and/or the SIPP/SSA project as specified in the request letters and with the understanding that the information will be used strictly in accordance with the provisions of the Internal Revenue Code pertaining to confidentiality.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 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 no notice of proposed rulemaking is required, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Jamie G. Bernstein, Office of the Associate Chief Counsel, Procedure & Administration (Disclosure & Privacy Law Division) Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

Section 301.6103(j)(1)–1T also issued under 26 U.S.C. 6103(j)(1); * * *

Par. 2. Section 301.6103(j)(1)–1T is added to read as follows:

§ 301.6103(j)(1)–1T Disclosure of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities (temporary).

(a) through (b)(2)(iv) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(a) through (b)(2)(iv).

(b)(2)(v) Total Social Security Taxable Earnings;

(vi) Quarters of Social Security coverage.

(b)(3)(i) through (xxii) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(b)(3)(i) through (xxii).

(xxiii) Wages, tips, and other compensation;

(xxiv) Social Security Wages;

(xxv) Deferred wages;

(xxvi) Social Security Tip Income;

(xxvii) Total Social Security Taxable Earnings;

(xxviii) Gross Distributions from Form 1099R.

(b)(4) through (b)(5)(ii) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(b)(4) through (b)(5)(ii).

(b)(5)(iii) From Form W–2, and related forms and schedules—

(A) Social Security Number;

(B) Employer Identification Number;

(C) Wages, tips, and other compensation;

(D) Social Security Wages;

(E) Deferred wages.

(iv) Total Social Security Taxable Earnings.

(v) Quarters of Social Security Coverage.

* * * * *

(b)(6) through(d) [Reserved]. For further guidance, see § 301.6103(j)(1)–1(b)(6) through (d).

(e) *Effective date.* This section is applicable to the Bureau of the Census on February 13, 2001 through February 13, 2004.

Approved: January 16, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Jonathan Talisman,

Assistant Secretary of the Treasury.

[FR Doc. 01–1989 Filed 2–12–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

U. S. Secret Service; Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary, Treasury.

ACTION: Final Rule.

SUMMARY: The Department is amending its regulations concerning the Privacy Act of 1974, Title 5 of the United States Code, Section 552a (Privacy Act) by revising the United States Secret Services Appendix D of this subpart to identify a new official responsible for administrative appeals of initial determinations refusing amendment of records made pursuant to the Privacy Act. The Department is also updating the address of the Secret Service Headquarters listed in the Appendix.

EFFECTIVE DATE: February 13, 2001.

FOR FURTHER INFORMATION CONTACT: Donna Cahill, Associate Chief Counsel, United States Secret Service, 950 H Street, NW., Suite 8300, Washington, DC 20373–5802.

SUPPLEMENTARY INFORMATION: The Secret Service is updating its current Privacy Act regulation Appendix D. The Secret Service moved its headquarters to a new location, consequently the addresses shown in the Appendix are no longer current and need to be updated to provide the proper address to the public.

The Secret Service also recognizes a need to revise paragraph 4 of Appendix D, which identifies the official responsible for reviewing administrative appeals of initial determinations refusing amendment of records. Existing regulations name the ''Assistant Secretary of the Treasury for Enforcement'' as the reviewing official. However, to be consistent with the language implementing the Freedom of Information Act (FOIA), 31 CFR part 1, subpart A, appendix D.4, published at 65 FR 40514 on June 30, 2000, the Secret Service has determined that the reviewing official should be changed to the ''Deputy Director, United States Secret Service.'' The address to which an appeal should be made by mail or delivered personally is also being changed to: ''Privacy Act Amendment Appeal, Deputy Director, United States Secret Service, 950 H Street, NW., Suite 8300, Washington, DC 20373–5802.''

These regulations are being published as a final rule because the amendment does not impose any requirements on any member of the public. This amendment is the most efficient means for the Treasury Department to implement its internal requirements for complying with the Privacy Act. Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary and finds good cause for making this rule effective on the date of publication in the **Federal Register**.

In accordance with Executive Order 12866, it has been determined that this final rule is not a ''significant regulatory action'' and, therefore, does not require a Regulatory Impact Analysis.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 1

Privacy.

PART 1—[AMENDED]

Subpart C—Privacy Act

Part 1 of title 31 of the Code of Federal Regulations is amended as follows:

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart C also issued under 5 U.S.C. 552a.

2. Amend 31 CFR part 1, subpart C, appendix D—UNITED STATES SECRET SERVICE, paragraph 2, by removing ''Room 720, 1800 G Street NW., Washington, DC 20223,'' and adding in its place, ''Suite 3000, 950 H Street, NW., Washington, DC 20373–5802.''

3. Amend 31 CFR part 1, subpart C, appendix D—UNITED STATES SECRET SERVICE, paragraph 3, by removing ''Room 720, 1800 G Street NW., Washington, DC 20223,'' and adding in its place, ''Suite 3000, 950 H Street, NW., Washington, DC 20373–5802.''

4. Amend 31 CFR part 1, subpart C, appendix D—UNITED STATES SECRET SERVICE by revising paragraph 4 to read as follows:

* * * * *

(4) Administrative appeal of initial determinations refusing amendment of

records. Appellate determinations, including extensions of time on appeal, with respect to records of the United States Secret Service will be made by the Deputy Director, United States Secret Service. Appeals may be mailed or delivered personally to: Privacy Act Amendment Appeal, Deputy Director, United States Secret Service, 950 H Street, NW., Suite 8300, Washington, DC 20373–5802.

* * * * *

5. Amend 31 CFR part 1, subpart C, appendix D—UNITED STATES SECRET SERVICE, paragraph 6, by removing ''Room 843, 1800 G Street NW., Washington, DC 20223,'' and adding in its place, ''Suite 8300, 950 H Street, NW., Washington, DC 20373–5802.''

Date: February 6, 2001.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 01–3634 Filed 2–12–01; 8:45 am]

BILLING CODE 4810–42–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL –6941–1]

RIN 2040–AC44

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final Rule; correction.

SUMMARY: This document contains corrections to a final rule, *Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California,* also know as the California Toxics Rule, which was published in the **Federal Register** on Thursday, May 18, 2000 (65 FR 31682). The California Toxics Rule promulgated numeric aquatic life and human health criteria for priority toxic pollutants and a compliance schedule provision which authorizes the State to issue schedules of compliance for new or revised National Pollutant Discharge Elimination System permit limits based on the federal criteria when certain conditions are met.

EFFECTIVE DATE: This action is effective February 13, 2001.

ADDRESSES: The administrative record for the final rule is available for public inspection at the U.S. Environmental Protection Agency, Region 9, Water Division, 75 Hawthorne Street, San Francisco, California 94105, between the hours of 8 a.m. and 4:30 p.m. For access to the administrative record, call Diane E. Fleck, P.E., Esq. at (415) 744–1997 for an appointment. A reasonable fee will be charged for photocopies.

FOR FURTHER INFORMATION CONTACT: Diane E. Fleck, P.E., Esq. or Philip Woods, U.S. Environmental Protection Agency, Region 9, Water Division, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1984 or (415) 744–1997, respectively.

SUPPLEMENTARY INFORMATION: On May 18, 2000, EPA published a final rule in the **Federal Register** titled *Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California* (see 65 FR 31682) that contained typographical errors. These typographical errors consisted of omission of units in the column headings to a table, inadvertent placement of a zero in one of the numeric criteria values, an oversight in the correct CAS number for a pollutant, and the incorrect placement of a parameter in a formula. This action corrects those typographical errors. These corrections are all minor in nature and do not substantively alter the final rule.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because this action merely corrects typographical errors in a rule that already went through public notice and comment. Furthermore, the corrections in today's rule are all minor in nature and do not substantively alter the final rule. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the May 18, 2000, **Federal Register** notice (65 FR 31682).

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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of February 13, 2001. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not

a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 131

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, water pollution control.

Dated: January 19, 2001.

J. Charles Fox,

Assistant Administrator, Office of Water.

For the reasons set out in the preamble, part 131 of chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.38 is amended:

a. In the table to paragraph (b)(1) under the column heading for ''B Freshwater'' by revising the column headings for ''Criterion Maximum Concentration'' and ''Criterion Continuous Concentration''.

b. In the table to paragraph (b)(1) under the column heading for ''C Saltwater'' by revising the column headings for ''Criterion Maximum Concentration'' and ''Criterion Continuous Concentration''.

c. Revising entry ''23.'' to the table in paragraph (b)(1).

d. Revising entry ''67.'' to the table in paragraph (b)(1).

e. Revising paragraph (b)(2)(ii).

The revisions read as follows:

§ 131.38 Establishment of Numeric Criteria for priority toxic pollutants for the State of California.

* * * * *

(b)(1) * * *

A		B Freshwater		C Saltwater		D Human health (10^{-6}) risk for carcinogens) For consumption of:	
# Compound	CAS number	Criterion maximum conc. (µg/L)[d] B1	Criterion continous conc. (µg/L)[d] B2	Criterion maximum conc. (µg/L)[d] C1	Criterion continious conc. (µg/L)[d] C2	Water & organisms (µg/L) D1	Organisms only (µg/L) D2
* * *		*	*		*	*	
23. Chlorodibromomethane	124481					[a,c] 0.41	[a,c] 34
* * *		*	*		*	*	
67. Bis(2-Chloroisopropyl)Ether	108601					[a] 1,400	[a,t] 170,000
* * *		*	*		*	*	

Footnotes to table in Paragraph (b)(1):

* * * * * * *

[a] Criteria revised to reflect the Agency q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of October 1, 1996. The fish tissue bioconcentration factor (BCF) from the 1980 documents was retained in each case.

[c] Criteria are based on carcinogenicity of 10^{-6} risk.

[d] Criteria Maximum Concentration (CMC) equals the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time without deleterious effects. Criteria Continuous Concentration (CCC) equals the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects. µg/L equals micrograms per liter.

* * * * * * *

[t] These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays and estuaries including San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of the State defined as inland (i.e., all surface waters of the State not bays or estuaries or ocean) without a MUN use designation. This section does not apply instead of the NTR for these criteria.

* * * * *

(2) * * *

(ii) CCC = WER x (Chronic Conversion Factor) x (exp{m_c[ln(hardness)]+b_c})

* * * * *

[FR Doc. 01–3617 Filed 2–12–01; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 73, and 76

[MM Docket Nos. 94–150, 92–51, and 87–154; FCC 00–438]

[RIN 3060–AF82]

Attribution Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document concerns rules and policies for attributing cognizable interests in applying the broadcast multiple ownership rules, the broadcast-cable cross-ownership rule, and the cable-Multipoint Distribution Service cross-ownership rule. The intended effect of this action is to clarify and resolve issues raised in petitions for reconsideration pertaining to the application of the Commission's attribution rules.

DATES: Effective April 16, 2001. Written comments by the public on the proposed information collections are due April 16, 2001. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before April 16, 2001.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW, Washington DC 20554. A copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov,* and the Edward C. Springer, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *edward.springer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Cyndi Thomas or Mania Baghdadi, Policy and Rules Division, Mass Media Bureau, at (202) 418–2120. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Order on Reconsideration (''MO&O'')* in MM Docket Nos. 94–150, 92–51, and 87–154, FCC 00–438, adopted on December 14, 2000, and released on January 19, 2001. The full text of this decision is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW, Room CY–A257, Washington DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 445 Twelfth Street, SW, Room CY–B402, Washington DC. The complete text is also available under the file name fcc00438.doc on the Commission's Internet site at *www.fcc.gov.*

This MO&O contains either new or modified information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). The general public and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

This *MO&O* contains either new or modified information collections. The Commission, therefore, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collections contained in this *MO&O* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 60 days from date of publication of this *MO&O* in the **Federal Register**. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–XXXX

Title: Reconsideration of Mass Media Attribution Rules, MM Docket Nos. 94–150, 92–51, and 87–154.

Form Nos.: FCC 301 (3060–0027), FCC 314 (3060–0031), FCC 315 (3060–0032), FCC 323 (3060–0010).

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,156.

Estimated Hours Per Response: 0.75 hours respondent; 2.0 hours contract attorney.

Frequency of Response: On occasion.

Estimated Costs to Respondents: $462,400.

Estimated Total Annual Burden: 867.

Needs and Uses: Among other things, the *MO&O* eliminates the single majority shareholder exemption for broadcast stations. This action will improve the precision of the Commission's attribution rules in identifying cognizable interests for purposes of its ownership rules. The Commission will revise the instructions for the FCC 301, FCC 314, FCC 315, and FCC 323 to conform to the new policy.

Synopsis of Memorandum Opinion and Order on Reconsideration

In this *MO&O,* the Commission grants, in part, and denies, in part, five petitions seeking reconsideration of the *Report and Order (''R&O'')* (64 FR 50622, September 17, 1999) released in this proceeding on August 6, 1999. In response to one petition, the Commission provides clarification on certain issues related to the newly adopted attribution rules. In the *R&O,* the Commission, in relevant part, eliminated its cross-interest policy and adopted the new equity/debt plus (EDP) rule, retained the single majority shareholder exemption, adopted rules that make interests in certain television local marketing agreements (LMAs) or time brokerage agreements attributable for purposes of the ownership rules, and established policies for grandfathering certain newly attributable interests. Commenters seek reconsideration of issues related to these actions. In addition, on its own motion, the Commission provides guidance on several issues that the petitioners did not raise, but that pertain to application of the EDP rule.

A. The Equity/Debt Plus Rule

1. Scope of the Rule

Background. The Commission adopted the EDP rule to address the concerns raised in the *Notice of Proposed Rulemaking (''NPRM'')* (60 FR 6483, February 2, 1995) and *Further Notice of Proposed Rulemaking (''FNPRM'')* (61 FR 67275, December 20, 1996), and in the record that its attribution rules did not address some interests, including multiple business and financial relationships that conveyed significant influence such that they should be attributed. For example, network affiliates had expressed concerns that attribution exemptions had permitted networks to extend their nationwide reach by structuring nonattributable deals in which the networks effectively exert significant influence, if not control, over licensees. The EDP rule is a targeted approach that balances the Commission's goal of maximizing the precision of the attribution rules by attributing only interests that are of concern, and its goals of not unduly disrupting capital flow, affording ease of administration, and providing certainty to regulatees. Specifically, the Commission applies a two-pronged test to determine whether an interest is attributable under the EDP rule. Under the first prong, the Commission asks whether the investor is either a major program supplier or a same-market media entity subject to the broadcast ownership rules. A program supplier that supplies over 15 percent of a station's total weekly broadcast programming hours is a ''major program supplier'' under the rule. An interest holder is considered a ''same-market media entity'' where it has an existing attributable interest under the Commission's attribution rules, other than the EDP rule, in a broadcast station, newspaper, or cable system, in a given market. The second prong looks at the extent of the financial interest. Any interest the major program supplier has in a station, to which it supplies programming, will be attributable under the EDP rule if the interest, aggregating both equity and debt, exceeds 33 percent of the total asset value of the station. Similarly, any interest the media entity has in another media entity in the same market will be attributable under the EDP rule if the interest, aggregating both equity and debt holdings, exceeds 33 percent of the total asset value of the additional media entity.

Discussion. The Commission reaffirms the EDP rule as adopted in the *R&O* and declines, at this time, to allow any general exemptions to the rule. The Commission will neither limit the scope of the EDP rule to major program suppliers, nor will the Commission limit the interests attributable under the EDP rule to equity investments only. As the Commission has stated, the intent of its local broadcast ownership rules is to protect competition and program diversity in local broadcast markets. The smaller audiences and fewer advertising dollars available in small broadcast markets limit the number of viable local broadcast stations in those markets. The need to protect incumbents' broadcast signal quality from interference from nearby stations limits the number of stations in all broadcast markets. These limitations on the entry of new broadcast stations make the protection of competition and diversity in local broadcast markets particularly important objectives of the Commission's ownership rules.

The function of the Commission's attribution rules is to define which interests will be counted in applying its ownership rules. The equity/debt approach is intended to resolve the Commission's concerns that multiple nonattributable business interests could be combined to exert influence over licensees. As a result, rather than applying its EDP rule to all investments in broadcasters in a single market, the rule is limited only to those relationships that afford the interest holder the incentive and means to exert influence or control over decisions regarding the core operations of broadcast stations. As the Commission stated in the *R&O*, this targeted approach balances its goal of maximizing the precision of the attribution rules by attributing only those interests that are of concern, and its equally significant goals of not unduly disrupting capital flow and of affording ease of administrative processing and reasonable certainty to regulatees in planning their transactions.

Applying the EDP rule to same-market media entities is based, in part, on economic studies that have shown that the partial co-ownership of otherwise competing local business entities can lead to a decrease in competition between those local businesses. For example, the owner of a broadcast station that also has a significant financial interest in another local broadcast station has an incentive and may have the opportunity to decrease the level of competition between the two stations by controlling or influencing management decisionmaking of the stations' operations. In the *R&O*, the Commission noted that a same-market media entity relationship affords the interest holder the incentive and means to exert this type of influence over licensees. Specifically, the Commission found that entities with existing local media interests may have an incentive and the means to use financing or contractual arrangements to obtain a degree of horizontal integration, within a particular market, that raises concerns because of the Commission's goal of

protecting local diversity and competition. The Commission therefore reaffirms its decision to include both same-market media entities and major program suppliers as the relationships that trigger the EDP rule.

Similarly, the Commission included debt under the EDP rule because the potential for certain creditors to exert significant influence over the core operations of a licensee, even though the creditors do not hold a direct voting or other equity interest, may undermine the diversity of voices the Commission seeks to promote. The Commission has found that, in many cases, it is no longer possible to classify investments strictly as ''equity'' or ''debt,'' and its has recognized the complexity of distinguishing debt from equity in cases where alleged debt obligations were found to be more properly characterized as equity. In the *R&O*, the Commission concluded that creditors may, through contractual rights and their ongoing right to communicate freely with the licensee, exert as much, if not more, influence or control over some corporate decisions as voting equity holders whose interests are attributable. Based on these same concerns, the Commission has found that debt interests are attributable both under its cable equity plus debt attribution rule, and also in determining eligibility for the New Entrant Bidding Credit under its competitive bidding procedures for commercial broadcast licenses. The Commission has not found that traditional *bona fide* debt by itself is attributable under its rules. The Commission does find, however, that significant debt relationships combined with other attributable interests in the same market, or a major program supplier's holding of significant debt in a licensee to which it supplies substantial amounts of programming, provide an incentive to influence or control key decisions concerning the debtor-station's operations.

Based upon the record in the *R&O*, the Commission found no reason to believe that the EDP rule would unduly curb investment in smaller, minority stations. The EDP rule does not preclude investment in any media entity, including minority and women-owned entities. In fact, the 33 percent threshold allows an investor to own up to one-third of a station's total assets without triggering the EDP rule. To help ensure that its actions do not unduly impede capital flow to broadcasting, the Commission raised the passive investor voting stock benchmark from 10 to 20 percent. As the Commission stated in the *R&O*, the function of its attribution rules is not to limit investment, but to identify influential interests over the core operations of a licensee that should be counted in applying the multiple ownership rules. The Commission's ownership rules, in turn, limit the extent of combined ownership based on its core policies of diversity and competition. Thus, if relaxation of ownership limits is warranted, those issues should be addressed through revision of the multiple and cross-ownership rules, not through redefinition of an attributable interest.

The commenter that raised the issue neither explains how the EDP rule will affect the transition to digital television or the ''spin off'' of broadcast stations, nor presents any evidence to support its concerns. In the *R&O*, the Commission stated that it would consider individual rule waivers in particular cases where substantial evidence is presented that the conversion to digital television would otherwise be unduly impeded or that a waiver would significantly expedite DTV implementation in that particular case. The Commission therefore reaffirms its decision to include debt interests in applying the EDP rule.

Asserting that the EDP rule will have inconsistent regulatory effects depending on the capitalization of broadcast companies, one commenter would quarrel with the Commission's focus on total assets. The Commission focused on total assets rather than looking at equity and debt separately because separate consideration could lead to distortions in applying the EDP rule depending on the percentage of total assets that each class of interests comprises. That the rule may advantage equity holders in entities with large debt interests does not undermine the basis of the EDP rule. As the Commission has explained, the EDP rule examines both equity and debt interests that are otherwise nonattributable to limit the ability of same market media entities and major program suppliers to circumvent the attribution rules by using those interests to gain significant influence over the licensee.

Commenters further argue that the rule is vague and overly broad, contending that the EDP rule could result in an attributable interest where no likelihood of control would exist, producing a lack of clarity in the rule that will cause problems both for licensees attempting to discern attributable interests and for the Commission attempting to administer the rule; and the Commission has not explained how an investment that is less than controlling can harm the public interest or competition in the marketplace. One commenter also asserts that the Commission has not demonstrated that the 33 percent threshold is appropriate, while another opposes adopting a more lenient threshold.

The Commission reiterates that attribution extends to relationships that permit significant influence over the core operations of a licensee, not just to investments that constitute controlling interests or that exceed 50 percent of the ownership of an entity. Shareholders with voting stock interests amounting to 5 percent or more may not have actual control over the management and operations of a licensee, but the Commission has set the voting equity benchmark at 5 percent or more because those shareholders have a realistic potential to exert significant influence or control over the licensees in which they invest. For example, a shareholder with voting stock interests that exceed the benchmark can influence the selection of board members through mechanisms such as proxy fights and, therefore, exert influence on the management of a licensee's operations.

In addition, as the Commission explained in the *R&O*, debt-holders or preferred stockholders, which do not have voting rights, might exert significant influence through contractual rights or other methods of access to a licensee. For example, an agreement entered into in conjunction with preferred stock might grant the holder the right to select the persons who will run for the board of directors. Based on its concern that multiple, substantial business interests could be combined to exert influence over licensees, the Commission determined that nonattributable interests held by major program suppliers and same-market media entities should be subject to limitation by the multiple ownership rules. Thus, the Commission's attribution rules are applicable where an interest holder has a realistic potential to affect the programming decisions or other core operating functions of a licensee.

The Commission also reaffirms the 33 percent investment threshold under the EDP rule for the reasons stated in the *R&O*. The Commission adopted the 33 percent benchmark, in part, based on its previous experience of using a 33 percent threshold in the context of applying the cross-interest policy. The Commission found it an appropriate and reasonable threshold to use in applying the EDP rule and noted that applying a 33 percent threshold had not had a disruptive effect in the context of the cross-interest policy. The Commission found that a 50 percent threshold would be inappropriately high and that the

thresholds of 25 percent or 10 percent would be too low. In exercising its broad discretion to set the threshold, the Commission was guided by its goal of attributing not only interests with the potential to control, but also those interests that convey a realistic potential to exert significant influence. The Commission reiterates, however, that while it will use this threshold in applying the EDP rule now, it may adjust the benchmark in the future, if evidence is provided that would warrant an adjustment.

One commenter asks the Commission effectively to review cases individually under the EDP rule by expanding the EDP rule to attribute any relationship that permits an entity to exert significant influence or control over the programming, management, or budgetary decisions of a licensee. The EDP rule takes into consideration an entity's participation in programming and is designed to make attributable debt or nonvoting equity interests that have the ability to influence a station's core management decisions. The Commission notes that the EDP rule may also result in attribution of interests that would otherwise be nonattributable by limiting the availability of the insulated limited partner, *bona fide* debt, and nonvoting stock attribution exemptions.

The Commission notes that in the *NPRM* in this proceeding, it invited comment on whether to adopt a case-by-case review of applications to address its concerns about whether the combination of nonattributable interests and business relationships in a particular case could create significant influence so as to warrant attribution. The Commission sought comment as to whether the burdens and uncertainty created by individual case review would be outweighed by the benefits of addressing its concerns in this area in the context of specific factual situations. Based on its review of the comments filed in response to the *NPRM*, and in response to individual cases at that time, the Commission rejected the case-by-case approach in the *FNPRM*. Instead, the Commission proposed the EDP rule as a ''balanced, specifically tailored approach that would focus the rules more precisely on those relationships that potentially permit significant influence such that they should be attributed.''

In ultimately rejecting case-by-case review and adopting the EDP rule in the *R&O,* the Commission found that the benefits of applying a rule that provides, to the greatest extent possible, regulatory certainty and eases application processing, outweighed the arguably increased accuracy that a case-by-case approach might afford. Indeed, a case-by-case approach might lead to lengthy fact-specific decisions of limited applicability and substantial processing difficulties and delays, impeding its goal of rapidly reviewing transactions and speeding new service to the public. Such a result would disserve the public interest. The Commission therefore believes that the bright-line EDP rule is superior to a case-by-case approach. Accordingly, the Commission denies the request to adopt a routine case-by-case approach to attribution. As it stated in the *R&O,* however, the Commission retains the discretion to review individual cases that present unusual issues and apply attribution on a case-by-case basis where it would serve the public interest to do so. The Commission finds that such discretion ensures a sufficient safety valve for unusual issues or cases that may arise.

Two petitioners seek general exemptions from the EDP rule. One petitioner asks the Commission to amend the EDP rule to make an exception for banks and other lending institutions, asserting that the EDP rule will detrimentally affect a lending institution's ability to invest in media companies because various arms of any big bank operate independently, and these independent groups may finance different broadcasters in the same market.

As it stated in the *R&O,* the Commission believes the EDP rule will not significantly curb investment in broadcast stations. The Commission finds no basis on which to distinguish banks or other lending institutions from other investors in media entities under the EDP rule. Under the Commission's attribution rules, commercial banks, including their venture capital subsidiaries, are treated as active investors. The Commission treats only the trust departments of banks as passive investors under its voting stock benchmark. Indeed, the EDP rule places no more restrictions on lending institutions, with respect to investment or foreclosure, than on any other type of entity interested in investing in a media entity. Similarly, the petitioner has not provided evidence that a large bank's obligation to track its investments for purposes of attribution differs from any other investor's obligation to do the same.

The petitioner cites the Right to Financial Privacy Act (RFPA), 12 U.S.C. 3401 *et seq.,* to suggest that the EDP rule might force lending institutions to disclose private borrower information in violation of financial privacy laws. Congress enacted the RFPA to provide individuals with some privacy rights in financial records that are in the hands of third parties. Among other things, the RFPA defines the conditions under which financial institutions may disclose an individual's financial records and the conditions under which government officials may access an individual's financial records. The RFPA also provides a civil cause of action for anyone injured by a violation of the act's substantive provisions. Applications for construction permits, applications for consent to assignments, as well as applications for consent to transfers of control of broadcast stations must list: (1) Each party to the application whose ownership or positional interest in the applicant is attributable; (2) that party's citizenship; (3) the basis on which the interest is considered attributable, *e.g.,* positional interest or investor attributable under the EDP rule; (4) the party's percentage of votes; and (5) the party's percentage of total assets in the station. The applications require information about the corporate or partnership structure of parties holding attributable interests and information on which the interests are deemed attributable. The applications do not inquire into the party's financial structure or amounts of loans involved in station acquisitions. Similarly, ownership reports do not require any information regarding financing or loan amounts. The petitioner does not explain how the information required in applications, or other forms, much less how the EDP rule itself, might cause lending institutions to violate privacy rights under the RFPA or any other law. In any event, if it is shown that materials filed with the Commission contain financial data that would customarily be guarded from competitors, its rules provide that the materials will not be made routinely available for public inspection.

Another petitioner asks the Commission to make certain exceptions to the EDP rule where the interest is held in a socially and economically disadvantaged small business concern (SDB). The governing statute for the Small Business Administration defines SDBs as businesses where the majority owners' race or ethnicity has impaired the owners' ability to obtain capital or credit for their businesses, and therefore impaired the businesses' ability to compete. At this time, the Commission shall defer consideration of MMTC's request to create certain exemptions for SDBs. The Commission has sponsored fact-finding studies as to whether preferences based on minority status may be justified consistent with the

Supreme Court's decision in *Adarand Constructors* v. *Pena,* 515 U.S. 200 (1995). When the results of these studies have been evaluated, the Commission may initiate future proceedings in this area, as warranted.

2. Clarification of the Definition of ''Total Assets'' and the Requirement of Continuing Compliance

Background. The EDP rule examines whether an interest holder has more than 33 percent of the total assets of a licensee or other media entity. In the *R&O,* the Commission defined total assets as the sum of all debt plus all equity. The Commission defined debt under the EDP rule to include all liabilities, whether short-term or long-term. Equity includes common or preferred stock, whether voting or nonvoting, as well as equity held by insulated limited partners in limited partnerships. The Commission also stated that it would require parties to maintain compliance with the attribution criteria as any changes in a firm's assets occur. Where sudden, unforeseeable changes take place, the Commission stated that it would afford parties a reasonable time, generally one year, to come into compliance with any ownership restrictions made applicable as a result of the change in attributable status.

Discussion. One petitioner asks the Commission to clarify what is included in the definition of ''total assets'' under the EDP rule. Initially, the Commission clarifies that it will include all equity, in whatever manner or amount the debt or equity is held, in computing whether an interest exceeds the EDP rule's 33 percent benchmark. For example, the Commission will include stock, non-stock, partnership or any other form of equity in the calculation. The Commission will also include all short-term and long-term debt liabilities, in whatever manner or amount the debt is held, in computing whether an interest exceeds the EDP rule's 33 percent benchmark.

Rather than itemizing what is included in the definition of ''total assets,'' the Commission clarifies that, for purposes of the EDP rule, an applicant may base the valuation of a station on either the book value as defined under standard financial accounting practices, or some other value, including the fair market value, provided the valuation is reasonable. In relying upon the book value, fair market value, or other reasonable value of a station, the applicant must use the valuation relevant at the time the application or ownership report is filed. If the issue arises in connection with a transfer or assignment application or an ownership report filed after consummation of a transfer or assignment, the applicant must use the sales price of that transfer or assignment as the total asset value. The Commission finds that clarifying the definition of total assets to include the foregoing reasonable methods of valuing a station's total assets for purposes of the EDP rule will provide applicants flexibility to use the most accurate valuation of the station at the time an application or ownership report is filed. The Commission may need to review an applicant's basis for computing its valuation where petitions are filed against the application. As a result, an applicant should retain the documentation on which it computes the value of the station so that it can produce the documentation as needed.

One petitioner asks the Commission to clarify when equity and debt interests that change over time should be evaluated for purposes of the EDP rule. The Commission reaffirms that parties must maintain compliance with the attribution criteria as any changes in a firm's assets occur. As noted in the *R&O,* where sudden, unforeseeable changes take place, the Commission will afford parties a reasonable time, but no more than 12 months from the time the unforeseen change occurred, to come into compliance with any ownership restrictions made applicable as a result of the change in attributable status. The Commission further notes that the scheduled repayment of loans is clearly not an ''unforeseeable'' or sudden event.

3. Clarification of Other EDP Issues

In addition to the issues that the petitioners raise in their petitions for reconsideration, the Commission notes that certain other issues have arisen with respect to the application of the newly adopted EDP rule. While none of the petitioners formally sought clarification on these particular issues, the Commission determines that it is in the public interest and serves its goals of promoting clarity and certainty under its regulations to provide guidance, on its own motion, on four issues.

a. Options, Warrants, and Loan Guarantees. Initially, the Commission considers how to apply the EDP rule to options, warrants, and loan guarantees. *Bona fide* debt, including a guarantee for a loan, is not ordinarily attributable under its rules. In addition, options, warrants, and other nonvoting interests with the right of conversion to voting interests are not ordinarily attributable until the conversion is effected. In the *R&O,* however, the Commission explained that the EDP approach would focus on those relationships that afford the interest holder the incentive and means to exert influence over the core operations of a licensee. For example, substantial investors or creditors that do not hold a direct voting interest may have the incentive and means, through contractual arrangements with the licensee, to exert as much, if not more, influence over some corporate decisions as voting equity holders whose interests are attributable. The Commission amended its rules to provide that where a major program supplier or same-market media entity holds a substantial financial interest in a licensee exceeding 33 percent of the total assets, that interest is attributable. In addition, the Commission amended its rules making the exemption of certain contractual arrangements, including debt and unexercised options and warrants, subject to the EDP rule.

Until exercised, options and warrants do not convey the underlying interest they entail, but they do constitute assets that are sold for consideration. Accordingly, the Commission will include the amount of consideration paid for the option or warrant in determining whether the option or warrant holder's interest is attributable under the EDP rule, and it will include any security deposit or financial contribution made by a guarantor for the guarantee of a loan in determining whether the guarantor's interest is attributable under the EDP rule. As noted, the Commission wishes to establish, so far as possible, a bright-line test that avoids the uncertainty of case-by-case review, and to premise the EDP rule on whether the extent of a financial interest is significant and is coupled with a relationship between the investor and the licensee that gives the investor an incentive to exert influence. Thus, the Commission clarifies that it will add any consideration or other amounts paid for options or warrants to any other equity or debt investment the holder has in a licensee. Similarly, it will include any financial contributions made by a guarantor, including amounts placed into escrow as security for a loan guarantee or amounts otherwise made in connection with the guarantee, to any other equity or debt investments the guarantor has in a licensee. In all cases, the Commission will then divide that aggregated amount by the total asset value of the licensee to determine whether the option or warrant holder's interest exceeds the 33 percent benchmark.

b. The Multiplier Rule. The Commission also clarifies, on its own motion, that it will use a ''multiplier'' in applying the EDP rule to indirect

interests held in licensees. The Commission has traditionally used a multiplier under its attribution rules to determine the ownership interest of a party whose interest is held through intervening corporate entities. Specifically, attribution ownership interests in a broadcast licensee, cable television system, or daily newspaper that are held indirectly by a party through one or more intervening corporations are determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain. Under the Commission's pass-through exception, however, a link in the ownership chain that represents a percentage interest exceeding 50 percent is treated as a 100 percent interest, when calculating the successive links in the ownership chain. The Commission also notes that in calculating the foreign ownership of a licensee or its parent under Section 310(b) of the Communications Act, as amended, it multiplies the percentage of interest held by each foreign investor in the successive links of the ownership chain, regardless of the amount of equity the foreign investor holds.

As the Commission does under its attribution rules in calculating whether an interest exceeds the voting stock benchmark in a corporation, the Commission will multiply the successive links in the vertical ownership chain of a licensee or other media entity to determine whether an indirect interest in the licensee or other media entity is attributable under the EDP rule. Specifically, the Commission will multiply the successive percentage interests, aggregating both equity and debt, in each intervening entity where a party holds an indirect interest in the licensee or other media outlet. Rather than applying the pass-through exception in determining whether an interest is attributable under the EDP rule, however, the Commission will multiply the percentage interest even where the interest in the link exceeds 50 percent.

In adopting the use of a multiplier, the Commission concluded that multiplication of successive interests would more realistically reflect a party's attenuated interest in a licensee where there are intervening corporations. The Commission established the pass-through exception to reflect the *de jure* control, rather than the *de facto* control, an entity might have over a licensee. Because the EDP rule applies not only to voting equity, but also to nonvoting equity and debt, the Commission will not employ the pass-through exemption to determine which interests are attributable under the EDP rule. The Commission made this same determination in the context of foreign ownership. Accordingly, the Commission will multiply the successive interests, aggregating both equity and debt, in each intervening entity, even where the interest exceeds 50 percent, to determine whether an indirect interest in a licensee is attributable under the EDP rule. The Commission also clarifies that it will use the multiplier not only in applying the EDP rule to corporations, but also to financial interests in partnerships, limited liability companies, or any other type of organizational form.

c. Interests in Multiple Stations. The Commission next clarifies how the EDP rule is applied where an investor holds an interest in an entity that owns several stations in one market or multiple stations in several markets. The issue of how to apply the EDP rule may arise, for example, where the investor holds a nonvoting financial interest amounting to over 33 percent of the total asset value of the entity that owns or is the licensee of the multiple stations. If the investor's interest is nonvoting stock, debt, an insulated limited liability company or limited partnership interest, the interest would not be attributable under the Commission's non-EDP attribution rules. If, however, the investor is either a major program supplier to a station owned by the multiple-station owner, or has a non-EDP attributable interest in another station in the same market in which the multiple-station owner owns a station, the issue arises whether the investor has, under the EDP rule, an attributable interest in all of the stations owned by the multiple-station owner. Such an issue might also arise in a case where a voting stock interest in the entity is non-attributable under the single majority shareholder exemption because the exemption is grandfathered, as discussed below.

The Commission clarifies that the investor in the foregoing case will not automatically hold an attributable interest under the EDP rule in all of the stations or media outlets owned by or licensed to the multiple-station owner. Rather, the investor will have an attributable interest under the EDP rule only in those stations or media outlets owned by or licensed to the multiple-station owner where the investor meets the triggering relationship prong of the EDP rule, *i.e.,* the investor is a major program supplier to a station owned by the multiple-station owner, or the investor is a same-market media entity. Specifically, an investor will have an attributable interest, under the EDP rule, in any station that is owned by or licensed to a multiple-station owner and to which the investor supplies over 15 percent of the station's total weekly broadcast programming hours. An investor will also have an attributable interest under the EDP rule in a station or media outlet owned by or licensed to the multiple station owner that is in the same market as a station or media outlet in which the investor also has an attributable interest under the Commission's non-EDP attribution rules.

d. Officers and Directors. The Commission clarifies how it will apply the EDP rule to officers and directors. In doing so, the Commission follows established precedent. Under the Commission's attribution rules, the officers and directors of a parent company of a broadcast licensee, cable television system, or daily newspaper, with an attributable interest in any subsidiary entity, are deemed to have a cognizable interest in the subsidiary. The Commission will apply the same principle under the EDP rule. Each director or officer is individually attributed with the company's full equity and debt interests for purposes of applying the EDP rule. Where an entity has a financial interest in a licensee, its officers or directors will be deemed to hold that same financial interest. The Commission will not, however, treat an officer's or director's investment in a media entity as the company's investment for the purpose of applying the EDP rule.

B. Single Majority Shareholder Exemption

Background. Under the single majority shareholder exemption from attribution, in a corporation in which a single shareholder owns more than 50 percent of the voting stock of the corporation, the interests of minority shareholders are not attributable. In the *R&O,* the Commission intended that the EDP rule would limit the availability of the single majority shareholder exemption. Thus, for example, if a minority shareholder's financial interest in a licensee amounts to over 33 percent of the licensee's total asset value and the minority shareholder is either a major program supplier to the licensee or a same-market media entity, the minority shareholder's interest would be attributable under the EDP rule, even if the licensee has a single majority shareholder. The Commission declined, in the *R&O,* to eliminate the single majority shareholder exemption for broadcast stations, while the Commission eliminated the exemption from its general cable attribution rules.

Discussion. One petitioner asks the Commission to eliminate the single majority shareholder exemption for broadcasters, arguing that it is arbitrary and capricious to eliminate the exemption for cable systems and not for broadcast stations. The Commission grants the request. In the *Cable Attribution Report and Order* (64 FR 67193, December 1, 1999), the Commission concluded that the single majority shareholder exemption should be eliminated because of its concern ''that a minority shareholder may be able to exert influence over a company even where a single majority shareholder exists.'' The Commission generally found in that proceeding no evidence that differences in ownership, financing, or management structures between the cable and broadcast industries warrant creating an attribution standard for applying the cable horizontal ownership, or other cable rules, that is different than the standard the Commission uses in applying the broadcast multiple ownership rules. Thus, the Commission sees no rational basis to distinguish between cable and broadcasting that would justify eliminating the exemption for the cable ownership rules while retaining it for the broadcast ownership rules.

In addition to resolving the apparent inconsistency that resulted from the Commission's decision to eliminate the single majority shareholder exemption in the cable context, eliminating this exemption from the broadcast attribution rules would promote one of its primary goals in this proceeding: to improve the precision of its attribution rules in identifying cognizable interests for purposes of its ownership rules. In adopting the single majority shareholder exemption in 1984, the Commission reasoned that minority interest shareholders ''would be unable to direct the affairs or activities of the licensee on the basis of their shareholdings'' where a single majority shareholder controls the corporation. The Commission therefore determined that these minority interests would not be deemed cognizable for purposes of the multiple ownership rules.

In this proceeding, as in the cable attribution rulemaking, the Commission has repeatedly stated that its attribution rules are designed to identify not only interests that enable an entity to control a company, but also interests that give an entity the potential to exert significant influence on a company's major decisions, even if the entity cannot control the company. Minority shareholders may not be able to control the affairs or activities of licensees, but, in certain circumstances, they clearly have the potential to influence a licensee's actions. Although the influence of a minority shareholder may be diminished somewhat where a single majority shareholder controls the licensee, the Commission has no reason to believe that the minority shareholder's influence is eliminated or so attenuated in such circumstances that the Commission should ignore its ownership interest for purposes of its ownership rules. Accordingly, the Commission will amend Note 2 of § 73.3555 of its rules to eliminate the single majority shareholder exemption from the broadcast attribution rules.

The Commission further concludes that the single majority shareholder exemption will no longer apply to minority interests acquired on or after the adoption date of this *MO&O.* Accordingly, any minority interests in a company with a single majority shareholder will be grandfathered if the interest was acquired before the adoption date of this *MO&O.* Grandfathering of these minority interests will be permanent until the grandfathered interest is assigned or transferred. The Commission notes, however, that grandfathered minority interests in companies with single majority shareholders remain subject to the EDP rule.

C. LMA Attribution and Filing Requirements

Background. An LMA or time brokerage agreement is a type of contract that generally involves the sale by a licensee of discrete blocks of time to a broker that then supplies the programming to fill the time and sells the commercial spot announcements to support the programming. In the *R&O,* the Commission adopted attribution rules for television LMAs. Specifically, an intra-market television LMA is *per se* attributable if the LMA involves more than 15 percent of a brokered station's weekly broadcast hours. In contrast, the Commission will not attribute television time brokerage agreements between stations in different markets, unless the agreements come under the EDP rule. Specifically, an inter-market television LMA is attributable only if the broker supplies more than 15 percent of a station's programming (*i.e.,* the broker is a major program supplier), and it has a financial investment that is more than 33 percent of the brokered station's total asset value. The Commission also decided to attribute intra-market radio LMAs for purposes of applying all of its multiple ownership rules that are applicable to radio stations, not just the radio duopoly rule, as in the past.

In the *R&O,* the Commission decided to review the issue of grandfathering existing intra-market radio LMAs on a case-by-case basis. Specifically, the Commission concluded that it would consider the issue of grandfathering radio LMAs whose attribution as of November 16, 1999, the effective date of the newly adopted rules, resulted in ownership violations. The Commission further concluded that any interest, other than intra-market radio and television LMAs, newly attributable under the rules that would result in violations of the ownership rules, would be grandfathered if the triggering interest was acquired before November 5, 1996, the date of the *FNPRM* in this proceeding. The Commission determined that grandfathering would apply only to the current holder of the attributable interest, and if the grandfathered interest was later assigned or transferred, new owners would be given one year to come into compliance with the multiple ownership rules. Non-grandfathered interests, except for non-grandfathered intra-market television LMAs, must be divested to comply with the Commission's multiple ownership rules within twelve months of the date of adoption of the *R&O.* The Commission requires the licensee that is the brokering station to file with the Commission, within 30 days of execution of a time brokerage agreement, a copy of any such agreement, redacted as necessary, that would result in the arrangement being attributed.

Discussion. One petitioner asks the Commission to deem unlawful LMAs entered into after August 6, 1999, the date the *R&O* was released, arguing that LMAs are an unlawful evasion of the ownership rules that hinder diversity and competition and are no longer necessary with adoption of the revised duopoly rule; the grandfathering plan for existing LMAs protects existing equity interests; and suggests that LMAs entered into after August 6, 1999, may have been entered into to bypass the Commission's transfer or assignment authorization requirements or to prevent a competitor from obtaining a transfer. Another petitioner urges the Commission to reject the request because the Commission has already found that the record shows that a number of television LMAs have resulted in public interest benefits.

The Commission made no finding in the *R&O* that LMAs are *per se* unlawful as of any date. The Commission's newly adopted attribution rules do not preclude parties from entering into LMAs. Rather, the Commission

amended its rules to make intra-market LMAs and some inter-market LMAs attributable for purposes of its broadcast ownership rules. Some LMAs are grandfathered, while interests in others may need to be divested. Parties may still enter into LMAs with the understanding that they may be subject to applicable ownership rules. Nothing suggests that Congress intended the Commission to deem *per se* unlawful all LMAs entered into after a certain date. Indeed, in the Conference Report on Section 202(g) of the Telecommunications Act of 1996, the conferees recognized ''the positive contributions of television LMAs.'' The Commission finds no reason to reconsider its decision that LMA interests may be attributable under its newly adopted rules, but that LMAs are not unlawful.

One petitioner also urges the Commission to require all existing LMAs, not just attributable LMAs, to be filed with the Commission. The Commission will not change the filing requirements for LMAs as adopted in the *R&O.* The attribution rules impose an affirmative obligation on licensees to determine whether a particular LMA is attributable and, if it is, to file the agreement with the Commission. Commercial radio and television licensees must also maintain copies of time brokerage agreements in their local public inspection files. As the Commission stated in the *R&O,* it believes a licensee's affirmative obligation in combination with its filing requirements will subject LMAs to sufficient scrutiny by competitors, the public, and the Commission. The Commission therefore reaffirms the requirement that brokering stations must file redacted copies of attributable LMAs with the Commission within 30 days of execution of the agreement.

D. Cross-Interest Policy

Background. The cross-interest policy has been applied to preclude individuals or entities from holding an attributable interest in one media property (broadcast station, newspaper, cable system) and having a ''meaningful'' albeit nonattributable interest in another media entity serving ''substantially the same area.'' In the *R&O,* the Commission eliminated the cross-interest policy.

Discussion. One petitioner asks the Commission to reconsider its decision to eliminate the cross-interest policy, contending that the Commission has not explained why the policy should not be retained in small and medium markets and arguing that the Commission has failed to consider the impact of its decision on diversity. The petitioner argues that repeal of the cross-interest policy may result in allowing business combinations and relationships, that were not permitted under the cross-interest policy, that are not covered by the EDP rule, and that are not addressed by other rules and remedies referenced by the Commission in its *R&O.*

The Commission declines to reconsider its decision to eliminate the cross-interest policy. Its decision in the *R&O* to eliminate the cross-interest policy was based on its judgment that the regulatory costs and chilling effects of administering the cross-interest policy and the benefits of applying clear ownership and attribution standards outweigh any risks of abuses in eliminating the policy. As the Commission noted, the cross-interest policy did not prohibit the relationships it covered outright, but required an *ad hoc* determination as to whether the relationships at interest would be permitted. The Commission determined that the public interest would be better served by administering, to the greatest extent possible, bright line tests with respect to attribution and ownership rather than case-by-case determinations, which delay processing and involve public and regulatory costs. The Commission did not base its conclusion simply on the increased certainty that a rule-based proscription provided. Rather, the Commission carefully reviewed the interests typically addressed by the cross-interest policy and included within the ambit of the new rules those interests that the Commission concluded warranted continued limitation. Most obvious among these is the consideration of nonvoting equity and debt interests under the Commission's EDP standard.

In short, the Commission's attribution tests were based on its best judgment, after a review of the record, as to what relationships should count in terms of administering the ownership rules. The ownership rules, in turn, are based on the Commission's competition and diversity analysis. The local ownership rules do take into account the nature and size of the market. Further, the Commission also retained discretion, in an appropriate case, ''to review individual cases that present unusual issues on a case-by-case basis where it would serve the public interest to conduct such a review.'' Administering regulatory procedures that are, to the greatest extent possible, clear and consistent is an important aspect of the public interest.

Procedural Matters

Authority for issuance of this *MO&O* is contained in Sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405.

Paperwork Reduction Act Analysis. This *MO&O* contains either new or modified information collections. The Commission, therefore, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget to comment on the information collections contained in this *MO&O* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due 60 days from date of publication of this *MO&O* in the **Federal Register**. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections in this *MO&O* should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, S.W., Room 1–C804, Washington, DC 20554, or over the Internet to *jboley@fcc.gov* and to Edward Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, N.W., Washington, DC 20503 or over the Internet to *edward.springer@omb.eop.gov.*

Supplemental Final Regulatory Flexibility Analysis. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) of the possible impact on small entities of the rules adopted in the *MO&O.* The Supplemental FRFA is set forth in the *MO&O.*

Supplemental Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM* and the *FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *NPRM* and *FNPRM,* including comment on the

IRFAs. The comments received were discussed in the Final Regulatory Flexibility Analysis (FRFA) contained in the *R&O* in this proceeding. As described below, this *MO&O* grants reconsideration of one action taken in the *R&O* and provides clarification of other issues. This associated Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) addresses the rule modifications on reconsideration and conforms to the RFA.

Need for, and Objectives of, the Memorandum Opinion and Order

The attribution rules seek to identify those interests in licensees or media entities that confer on their holders a degree of influence or control such that the holders have the potential to affect the programming decisions of licensees or other core operating functions. The attribution rules are used to implement the Commission's broadcast multiple ownership rules. The Commission's goals in this proceeding are to improve the precision of the attribution rules, avoid disruption in the flow of capital to broadcasting, afford clarity and certainty to regulatees and markets, and facilitate application processing. While its focus is on the issues of influence or control, the Commission must also tailor the attribution rules to permit arrangements where an ownership or positional interest involves minimal risk of influence to avoid unduly restricting the means by which investment capital may be made available to the broadcast industry. The rule revisions and clarifications contained in this *MO&O* meet these goals.

Summary of Significant Issues Raised by the Public

The comments in response to the IRFAs that addressed small business issues were discussed in the FRFA contained in the *R&O* in this proceeding. We received no petitions for reconsideration in direct response to that FRFA. In its petition for reconsideration, however, the Office of Communications, Inc. of United Church of Christ *et al.* (UCC) asked the Commission to eliminate the single majority shareholder exemption for broadcast stations, arguing that it is arbitrary and capricious to eliminate the exemption for cable systems and not broadcasters. Under the single majority shareholder exemption from attribution, in a corporation in which a single shareholder owns more than 50 percent of the voting stock of the corporation, the interests of minority shareholders are not attributable. The Commission grants UCC's request, finding no rational basis to distinguish between cable and broadcasting that would justify eliminating the exemption for the cable ownership rules while retaining it for the broadcast ownership rules. Any minority interest in a company with a single majority shareholder will be grandfathered if the interest was acquired before the adoption date of this *MO&O.* Grandfathered minority interests in companies with single majority shareholders, however, remain subject to the equity/debt plus (EDP) rule.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

The rules revisions contained in this *MO&O* will apply to full service television and radio licensees and permittees, potential licensees and permittees, cable services or systems, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service, and newspapers. These entities are discussed in detail in the FRFA contained in the *R&O* at Section III.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The *MO&O* clarifies various aspects of the EDP rule adopted in the *R&O.* One clarification is to use the ''multiplier'' in calculating an EDP interest. Specifically, the Commission will multiply the successive percentage interests, aggregating both equity and debt, in each intervening entity where a party holds an indirect interest in the licensee or other media outlet. In calculating an EDP interest, however, the Commission will not apply the pass-through exception, which applies to indirect voting stock interests in corporations where a link in the ownership chain that represents a percentage interest exceeding 50 percent is treated as a 100 percent interest. Thus, the Commission will multiply successive interests for purposes of EDP, even where the interest exceeds 50 percent. The decision not to apply the pass-through exception is less restrictive than the traditional application of the multiplier on all entities, including small businesses.

The *MO&O* also eliminates the single majority shareholder attribution exemption. Elimination of the single majority shareholder attribution exemption does not affect grandfathered small entities. Elimination of the single majority shareholder exemption does not affect the Commission's ownership reporting requirements. The reporting requirements for non-grandfathered licensees may increase, however, because those licensees will be required to report interests that are newly attributable as a result of elimination of the exemption. Those entities are already required to file ownership reports with the Commission, so any additional cost associated with this reporting requirement is nominal.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

Under the Commission's pass-through exception to the multiplier rule, a link in the ownership chain that represents a percentage interest exceeding 50 percent is treated as a 100 percent interest, when calculating the successive links in the ownership chain. The *MO&O* clarifies that the Commission will not apply the pass-through exception in using the multiplier to calculate interests under the EDP rule. An alternative to this decision is to apply the pass-through exception for purposes of EDP, which would make the calculation of attributable EDP interests as restrictive on all entities, including small businesses, as those calculated under the traditional application of the multiplier.

The *MO&O* eliminates the single majority shareholder attribution exemption. To minimize the disruptive effect of this attribution rule change, the *MO&O* grandfathers entities, subject to the EDP rule, relying on the single majority shareholder exemption whose interests were acquired before the adoption date of the *MO&O.* An alternative to eliminating the exemption would be to leave the rule as is. In addition to the prior decision to eliminate the exemption for cable operators, however, the Commission believes that eliminating the exemption from the broadcast attribution rules will promote one of its primary goals to improve the precision of the

Commission's attribution rules in identifying cognizable interests for purposes of the ownership rules.

Report to Congress: The Commission will send a copy of the *MO&O,* including this Supplemental FRFA, in a report to be sent to Congress pursuant to SBREFA. In addition, the Commission will send a copy of the *MO&O,* including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

The petitions for reconsideration or clarification are granted to the extent provided herein and otherwise are denied pursuant to sections 4(i), 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, and 405, and § 1.429(i) of the Commission's rules, 47 CFR 1.429(i).

Sections 4(i) & (j), 303(r), 307, 308 and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) & (j), 303(r), 307, 308 and 309, parts 21, 73, and 76 of the Commission's rules, 47 CFR. Parts 21, 73, 76, are amended as set forth in the *MO&O.*

The rule amendments set forth in the *MO&O* shall be effective sixty days after publication in the **Federal Register**.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *MO&O* in MM Docket Nos. 94–150, 92–51, and 87–154, including the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

The new or modified paperwork requirements contained in this *MO&O* (which are subject to approval by the Office of Management and Budget (OMB)) will go into effect upon OMB approval.

This proceeding is hereby terminated.

List of Subjects in

47 CFR Part 21

Multipoint distribution service.

47 CFR Part 73

Television broadcasting, Radio broadcasting.

47 CFR Part 76

Cable television service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons set forth in the preamble, Parts 21, 73, and 76 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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

Authority: Secs. 1, 2, 4, 201–205, 208, 215, 218, 303, 307, 313, 403, 404, 410, 602, 48 Stat. as amended, 1064, 1066, 1070–1073, 1076, 1077, 1080, 1082, 1083, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 154, 201–205, 208, 215, 218, 303, 307, 313, 314, 403, 404, 410, 602; 47 U.S.C. 552, 554.

2. Section 21.912 is amended by:

a. Designating Note 1 as ''Note 1 to § 21.912'';

b. Removing Note 1(b);

c. Redesignating Notes 1(c) through Notes 1(l) as Notes 1(b) to § 21.912 through Note 1(k) to § 21.912;

d. Revising newly redesignated Note 1 (c) to § 21.912 and Note 1(e) to § 21.912;

e. Revising the first and second sentence of newly redesignated Note 1(f)(2);

f. Revising newly redesignated Note 1(h)(3);

g. Revising the introductory text to newly redesignated Note 1(i), and revising redesignated Note 1(i)(2); and

h. Designating Note 2 as ''Note 2 to § 21.912''.

The revisions and deletion read as follows:

§ 21.912 Cable television company eligibility requirements and MDS/cable cross-ownership.

* * * * *

Note 1 to § 21.912: * * *

* * * * *

(c) Attribution of ownership interests in an MDS licensee or cable television system that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. For purposes of paragraph (i) of this note, attribution of ownership interests in an MDS licensee or cable television system that are held indirectly by any party through one or more intervening organizations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, and the ownership percentage for any link in the chain that exceeds 50% shall be included for purposes of this multiplication. [For example, except for purposes of paragraph (i) of this note, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of ''Licensee,'' then X's interest in ''Licensee'' would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in ''Licensee'' would be 2.5% (0.1 x 0.25). Under the 5% attribution benchmark, X's interest in ''Licensee'' would be cognizable, while A's interest would not be cognizable. For purposes of paragraph (i) of this note, X's interest in ''Licensee'' would be 15% (0.6 x 0.25) and A's interest in ''Licensee'' would be 1.5% (0.1 x 0.6 x 0.25). Neither interest would be attributed under paragraph (i) of this note.]

* * * * *

(e) Subject to paragraph (i) of this note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (i) of this note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(f) * * *

(2) For a licensee or system that is a limited partnership to make the certification set forth in paragraph (f)(1) of this note, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the MDS or cable television activities of the partnership. For a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (f)(1) of this note, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the MDS or cable television activities of the LLC or RLLP. * * *

* * * * *

(h) * * *

(3) The sum of the interests computed under paragraph (h)(1) of this note plus the sum of the interests computed under paragraph (h)(2) of this note is equal to or exceeds 20 percent.

(i) Notwithstanding paragraphs (e) and (f) of this note, the holder of an equity or debt interest or interests in an MDS licensee or cable television system subject to the MDS/cable cross-ownership rule (''interest holder'') shall have that interest attributed if:

* * * * *

(2) The interest holder also holds an interest in an MDS licensee or cable television system that is attributable under paragraphs of this note other than this paragraph (i) and which operates in any portion of the franchise area served by that cable operator's cable system.

* * * * *

PART 73—RADIO BROADCAST SERVICES

3. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

4. The notes following § 73.3555 are amended by:

a. Designating Note 1 as ''Note 1 to § 73.3555'';

b. Designating Note 2 as ''Note 2 to § 73.3555'';

c. In Note 2 to § 73.3555 remove paragraph (b);

d. In Note 2 to § 73.3555 paragraphs (c) through (k) are redesignated as paragraphs (b) through (j);

e. In Note 2 to 73.3555 revise newly redesignated paragraphs (c) and (e);

f. In Note 2 to § 73.3555 revise newly redesignated paragraph (f)(2);

g. In Note 2 to § 73.3555 revise newly redesignated paragraph (h)(3);

h. In Note 2 to § 73.3555 revise the introductory text to newly redesignated paragraphs (i), and (i)(2)(i);

i. Designating Note 3 as ''Note 3 to § 73.3555'';

j. Designating Note 4 as ''Note 4 to § 73.3555'';

k. Designating Note 5 as ''Note 5 to § 73.3555'';

l. Designating Note 6 as ''Note 6 to § 73.3555'';

m. Designating Note 7 as ''Note 7 to § 73.3555'';

n. Designating Note 8 as ''Note 8 to § 73.3555'';

o. Designating Note 9 as ''Note 9 to § 73.3555''; and

p. Designating Note 10 as ''Note 10 to § 73.3555''.

The revisions and deletion read as follows:

§ 73.3555 Multiple ownership.

* * * * *

Note 2 to § 73.3555: * * *

(c) Attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening corporations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, except that wherever the ownership percentage for any link in the chain exceeds 50%, it shall not be included for purposes of this multiplication. For purposes of paragraph (i) of this note, attribution of ownership interests in a broadcast licensee, cable television system or daily newspaper that are held indirectly by any party through one or more intervening organizations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product, and the ownership percentage for any link in the chain that exceeds 50% shall be included for purposes of this multiplication. [For example, except for purposes of paragraph (i) of this note, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of ''Licensee,'' then X's interest in ''Licensee'' would be 25% (the same as Y's interest because X's interest in Y exceeds 50%), and A's interest in ''Licensee'' would be 2.5% (0.1 x 0.25). Under the 5% attribution benchmark, X's interest in ''Licensee'' would be cognizable, while A's interest would not be cognizable. For purposes of paragraph (i) of this note, X's interest in ''Licensee'' would be 15% (0.6 x 0.25) and A's interest in ''Licensee'' would be 1.5% (0.1 x 0.6 x 0.25). Neither interest would be attributed under paragraph (i) of this note.]

* * * * *

(e) Subject to paragraph (i) of this note, holders of non-voting stock shall not be attributed an interest in the issuing entity. Subject to paragraph (i) of this note, holders of debt and instruments such as warrants, convertible debentures, options or other non-voting interests with rights of conversion to voting interests shall not be attributed unless and until conversion is effected.

(f) * * *

(2) For a licensee or system that is a limited partnership to make the certification set forth in paragraph (f)(1) of this note, it must verify that the partnership agreement or certificate of limited partnership, with respect to the particular limited partner exempt from attribution, establishes that the exempt limited partner has no material involvement, directly or indirectly, in the management or operation of the media activities of the partnership. For a licensee or system that is an LLC or RLLP to make the certification set forth in paragraph (f)(1) of this note, it must verify that the organizational document, with respect to the particular interest holder exempt from attribution, establishes that the exempt interest holder has no material involvement, directly or indirectly, in the management or operation of the media activities of the LLC or RLLP. * * *

* * * * *

(h) * * *

(3) The sum of the interests computed under paragraph (h)(1) of this note plus the sum of the interests computed under paragraph (h)(2) of this note is equal to or exceeds 20 percent.

(i) Notwithstanding paragraphs (e) and (f) of this note, the holder of an equity or debt interest or interests in a broadcast licensee, cable television system, daily newspaper, or other media outlet subject to the broadcast multiple ownership or cross-ownership rules (''interest holder'') shall have that interest attributed if:

* * * * *

(2)(i) The interest holder also holds an interest in a broadcast licensee, cable television system, newspaper, or other media outlet operating in the same market that is subject to the broadcast multiple ownership or cross-ownership rules and is attributable under paragraphs of this note other than this paragraph (i); or

* * * * *

5. Section 73.3613 is amended by revising the first sentence of paragraph (d) and revising paragraph (e) to read as follows:

§ 73.3613 Filing of contracts.

* * * * *

(d) *Time brokerage agreements.* Time brokerage agreements involving radio stations, where the licensee (including all parties under common control) is the brokering entity, there is a principal community contour overlap (predicted or measured 5 mV/m groundwave for AM stations and predicted 3.16 mV/m for FM stations) with the brokered station, and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving television stations where licensee (including all parties under common control) is the brokering entity, the brokering and brokered stations are both licensed to the same market as

defined in the local television multiple ownership rule contained in § 73.3555(b), and more than 15 percent of the time of the brokered station, on a weekly basis, is brokered by that licensee; time brokerage agreements involving radio or television stations that would be attributable to the licensee under § 73.3555 note 2(i).
* * *

(e) The following contracts, agreements or understandings need not be filed but shall be kept at the station and made available for inspection upon request by the FCC: contracts relating to the joint sale of broadcast advertising time that do not constitute time brokerage agreements pursuant to § 73.3555 note 2(j); subchannel leasing agreements for Subsidiary Communications Authorization operation; franchise/leasing agreements for operation of telecommunications services on the TV vertical blanking interval and in the visual signal; time sales contracts with the same sponsor for 4 or more hours per day, except where the length of the events (such as athletic contests, musical programs and special events) broadcast pursuant to the contract is not under control of the station; and contracts with chief operators.

6. Section 73.3615 is amended by revising the second sentence in paragraph (a)(3)(iii)(B) to read as follows:

§ 73.3615 Ownership reports.

* * * * *

(a) * * *
(3) * * *
(iii) * * *
(B) * * * If X has a voting stockholder interest in the licensee, only those voting interests of X that are cognizable after application of the ''multiplier'' described in note 2(c) of § 73.3555 of the rules, if applicable, shall be reported. * * *

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

7. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 317, 325, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

8. Section 76.501 is amended by:
a. Designating Note 1 as ''Note 1 to § 76.501'';
b. Designating Note 2 as ''Note 2 to § 76.501'';
c. Designating Note 3 as ''Note 3 to § 76.501'';
d. Designating Note 4 as ''Note 4 to § 76.501'';
e. Designating Note 5 as ''Note 5 to § 76.501'';
f. Designating Note 6 as ''Note 6 to § 76.501'' and revising it.
The revision reads as follows:

§ 76.501 Cross-ownership.

* * * * *

Note 6 to § 76.501: In applying paragraph (a) of § 76.501, for purposes of paragraph note 2(i) of this section, attribution of ownership interests in an entity covered by this rule that are held indirectly by any party through one or more intervening organizations will be determined by successive multiplication of the ownership percentages for each link in the vertical ownership chain and application of the relevant attribution benchmark to the resulting product. The ownership percentage for any link in the chain that exceeds 50% shall be included. [For example, if A owns 10% of company X, which owns 60% of company Y, which owns 25% of ''Licensee,'' then X's interest in ''Licensee'' would 15% (0.6x0.25), and A's interest in ''Licensee'' would be 1.5% (0.1x0.6x0.25).]

[FR Doc. 01–3175 Filed 2–12–01; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

Application for Special Temporary Authorization; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulations redesignated and amended at 62 FR 5928, 5929, February 10, 1997. The regulations related to applications for special temporary authorizations contained in § 25.120(a).

EFFECTIVE DATE: February 13, 2001.

FOR FURTHER INFORMATION CONTACT: Terry D. Johnson, (202) 418–0445 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction prescribed the procedures one must follow to apply for special temporary authorization to install and/or operate new or modified equipment for earth stations.

Need for Correction

As published, § 25.120(a) contains an incomplete mailing address which could delay receipt and processing of requests for special temporary authorizations.

List of Subjects in 47 CFR Part 25

Administrative practice and procedure, Communications common carriers, Radio, Telecommunications, Television.

PART 25—SATELLITE COMMUNICATIONS

Accordingly, 47 CFR part 25 is corrected by making the following correcting amendment:

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

§ 25.120 Application for special temporary authorization. [Corrected]

2. In § 25.120 revise the last sentence in paragraph (a) to read as follows:

(a) * * * A copy of the request for special temporary authority also shall be forwarded to the Commission's Columbia Operations Center, 9200 Farm House Lane, Columbia, MD 21046–1609.

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 01–3636 Filed 2–12–01; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–39; FCC 01–24]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document resolves a number of issues concerning the transition to digital broadcast television (DTV). Among the issues resolved in the Report and Order are: when to require election by licensees of their post-transition DTV channel; whether to require replication by DTV licensees of their NTSC Grade B service contours; whether to require enhanced service to the principal community served by DTV licensees; and how we should process mutually exclusive applications. We also address in this document a host of technical issues and determine that at this time there is no persuasive information to indicate that there is any deficiency in the 8–VSB modulation system of the DTV transmission standard that would cause us to revisit

our decision to deny Sinclair Broadcasting Group, Inc.'s, petition and to add COFDM to the current 8–VSB DTV standard or to grant Univision Communications Inc.'s Petition for Expedited Rule Making to that same effect. We also decline to adopt technical performance standards for DTV receivers.

DATES: Effective April 16, 2001.

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

FOR FURTHER INFORMATION CONTACT: Roger Holberg or Mania Baghdadi, Mass Media Bureau, Policy and Rules Division, (202) 418–2120 or Alan Stillwell or Bruce Franca, Office of Engineering and Technology, (202) 418–2470.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* (''*R&O*'') in MM Docket No. 00–39, FCC 01–24, adopted January 18, 2001, and released January 19, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 445 12th Street, SW., Room CY–B402, Washington, DC. This *R&O* is also available on the Internet at the Commission's website: *http://www/fcc.gov.*

Synopsis of Report and Order

1. In this *R&O* we will impose a channel election requirement, requiring commercial television stations with two in-core channels (*i.e.,* channels 2–51) to elect their post-transition digital channel by December 31, 2003. We will resolve in a subsequent rule making both priority as to channel assignment (*e.g.,* should stations that must move to a new channel have the highest priority and get the first selection of channels that are returned) and processing issues as well as the question of whether any channels should be placed off-limits, not available for use by DTV licensees. Additionally, while full replication by DTV licensees of the NTSC service area was an important Commission objective in developing the DTV Table of Allotments and remains a key goal, we will not impose a full replication requirement. Instead, we have determined that, after December 31, 2004, whatever portion of a commercial broadcaster's NTSC Grade B contour is not replicated with its digital television signal will simply cease to be protected in the Table of Allotments. We will, however, impose a city-grade service obligation that will require licensees to encompass their communities of license with a stronger signal than that with which they had, or will have, to commence DTV operations. In this *R&O*, we also adopt DTV application cut-off procedures and address how we will resolve any mutual exclusivities that arise. We also address in the *R&O* portion of this document a host of technical issues and determine that at this time there is no persuasive information to indicate that there is any deficiency in the 8–VSB modulation system of the DTV transmission standard that would cause us to revisit our decision to deny Sinclair Broadcasting Group, Inc.'s, petition and to add COFDM to the current 8–VSB DTV standard or to grant Univision Communications Inc.'s Petition for Expedited Rule Making to that same effect. We also decline to adopt technical performance standards for DTV receivers.

I. Background

2. In the Commission's digital television proceeding (MM Docket No. 87–268) we repeatedly indicated our intent to hold periodic reviews of the progress of the conversion to digital television and to make such mid-course corrections as were necessary to ensure the success of that conversion. We commenced this, the first, periodic review, with a *Notice of Proposed Rule Making* (''*NPRM*''), adopted March 6, 2000 (65 FR 15600, March 23, 2000). In that *NPRM* we stated that the conversion is progressing and that television stations are working hard to convert to digital television. We invited comment on several issues that we considered essential to be resolved in order to ensure that progress continued and that potential sources of delay were eliminated.

II. Discussion

A. Channel Election

3. In the *NPRM*, we noted that we had decided in the DTV *Sixth Memorandum Opinion and Order* (''*6MO&O*''), 63 FR 15774, April 1, 1998, that, after the transition, DTV service would be limited to a ''core spectrum'' consisting of current television channels 2 through 51. Although some stations received transition channels out of the core, and a few had both their NTSC and DTV channels outside the core, we believe there will be sufficient spectrum so that at the end of the transition all DTV stations will be operating on core channels. Nevertheless, it now appears that there will be more out of core stations that must be accommodated with a core channel than we initially anticipated because new applicants will be allowed to convert their single NTSC channels to DTV operation and those on channels outside the core will be provided a post-transition channel inside the core. Also, as noted in the *NPRM*, the recent establishment of primary Class A TV stations may limit availability of core channels in some areas. Accordingly, the *NPRM* suggested a May 1, 2004, election date, but asked for comment on whether the election date should be earlier.

4. We have determined to mandate a December 31, 2003, election deadline for commercial television stations both their NTSC and DTV operations on in-core channels. This is more than one and a half years after the last commercial station construction deadline (*i.e.,* May 1, 2002), giving these stations ample time in which to decide which of their two core channels would be most suitable for use in digital broadcasting. Setting this channel election deadline will enable us to determine at an early date, on a market-by-market basis, what channels will be available for stations having two out-of-core channels and for other users and will assist in our clearing of this spectrum. We believe that the transition process will be sufficiently along by December 31, 2003, to allow commercial broadcasters to make an informed channel selection decision. An earlier election decision will provide commercial broadcasters with more time in which to construct the replication capability prior to our December 31, 2004, ''use or lose'' date, also being adopted herein. The choice of this election deadline for this category of stations strikes an appropriate balance between the need for stations to have a sufficient amount of time in which to gain experience in DTV operation and allowing stations that will have to move—particularly from out-of-core to in-core—to plan for the DTV channel conversion by December 31, 2006.

5. Non-commercial stations that have both their NTSC and DTV operations on in-core channels will have until the end of 2004 to elect their channels. This later deadline allows noncommercial stations to have at least a full year of experience with their DTV operation before having to choose their post-transition channels and, accordingly, accommodates the needs of public television.

6. We will resolve in future DTV periodic reviews a decision on whether and when stations with one or both of their channels out of the core will have to make an election. We presume that,

except in extraordinary circumstances, stations that have one in-core and one out-of-core channel will remain on their in-core channel after the transition. We will resolve issues relating to the particulars of the election process and procedure to later periodic reviews or publish them in Public Notices issued with sufficient time to allow for licensees to familiarize themselves with them. We will also resolve later the issue of whether any channels should be off limits. In *all* cases, including stations with both channels in-core, we reserve the right to select the final channel of operation in order to minimize interference and maximize the efficiency of broadcast allotments in the public interest. We intend to review the channel elected to ensure that its use furthers these goals.

7. Under the Community Broadcasters Protection Act of 1999 (CBPA), the Commission is prohibited from granting a Class A license to a low power television station operating on a channel within the core spectrum that includes any of the 175 additional channels that were referenced in the Commission's *6MO&O*. In the *6MO&O*, the Commission expanded the DTV core spectrum to cover, in total, channels 2–51, and we observed that this expansion would add approximately 175 additional channels to the core. The CBPA, as we noted in the *NPRM*, also requires the Commission to identify these 175 channels within 18 months of the Act's enactment. We thus invited comment as to whether, based on the new obligations imposed by this legislation, we are required to impose an earlier election date than May 1, 2004. After enactment of the CBPA, we concluded in our *R&O* establishing a Class A television service that we are currently in compliance with the requirement of section (f)(6)(B) of the CBPA that we protect the 175 channels, because these channels are now encumbered by existing NTSC or DTV allotments. (*R&O* in MM Docket No. 00–10, 65 FR 29985, May 10, 2000.) While a portion of these channels will become available for other parties once the broadcast licensees make their elections and begin to discontinue operations on one of their paired channels at the end of the DTV transition, we will have the opportunity closer to that stage to ensure that the CBPA's channel protection requirement continues to be met. In any event, we are establishing herein an election deadline for commercial stations that is earlier than that originally proposed.

B. Replication

8. We established replication as a goal in the creation of the initial DTV Table of Allotments. By this we meant that each DTV channel allotment was chosen to best allow its DTV service to match the Grade B service contour of the NTSC station with which it was paired. This approach provides important benefits to both viewers and broadcasters.

9. Thus far we have not mandated replication. We instead have allowed broadcasters to build facilities sufficient to emit a DTV signal strong enough to ensure that the predicted DTV service contour covers the community of license in order to accelerate the construction timetable and to alleviate the burdens that it placed on broadcasters. We nonetheless noted that during the first two-year review, we would consider whether to modify the build-out requirement to require a full-replication facility.

10. After considering the comments, and balancing the arguments for and against, we have decided not to require replication. We expect that DTV broadcasters will eventually choose to replicate their NTSC service areas to serve their viewers. However, we will not require such replication because we want to give broadcasters a measure of flexibility as they build their DTV facilities to collocate their antennas at common sites, thus minimizing potential local difficulties locating towers and eliminating the cost of building new towers. Some broadcast commenters have taken advantage of these measures, which we suggested in the *5R&O*, and it would be unfair to them and might delay construction to require them to change these plans, if necessary, to achieve full replication. Additionally, some licensees are not operating on their core channels and it would be inefficient to require them to construct full-replication facilities on the channel that they will soon vacate. As Joint Broadcasters point out, the migration to final DTV channels is by no means complete. To require NTSC service replication by DTV stations under these circumstances would indeed be premature, would cause excessive additional expense to both commercial and noncommercial broadcasters alike, and could delay the transition. Finally, we are not requiring replication in order that broadcasters can have more flexibility to collocate their transmitters and make other necessary adjustments. As pointed out in the comments, the use of common sites can also minimize environmental degradation.

11. While we wish to assure broadcasters a measure of flexibility in constructing their DTV facilities, we continue to want to assure that viewers do not lose service and we take seriously our mandate to speed the transition and to ensure that the spectrum is used efficiently. We have determined that the best way to accomplish this objective without imposing undue cost and delay on broadcasters, and to minimize environmental effects, is not to expressly require full replication of NTSC coverage with DTV service. However, to provide an incentive to them to do so, we will, as proposed by several commenters, and as discussed in the *NPRM*, cease to give interference protection to their unreplicated service area as of December 31, 2004. Thus, by December 31, 2004, commercial DTV licensees must either be on-the-air replicating their April 1997 NTSC Grade B service area as of that date or lose interference protection to the unreplicated portion of this service area outside the noise-limited signal contour.

12. We view this as part of a three-stage approach to the transition to DTV. The first stage will end May 1, 2002, by which time all commercial television stations must commence digital service. Noncommercial stations will have until May 1, 2003, to complete this stage. The second stage will end at the close of 2003, when channel election will be required for all commercial stations or the close of 2004, for noncommercial stations. The final stage will be occur on December 31, 2004, at which time commercial DTV licensees will lose interference protection to those portions of their NTSC service area that they do not replicate with their DTV signal. Noncommercial DTV licensees will not lose such protection until December 31, 2005.

C. City Grade Coverage

13. For the reasons we discussed in the *NPRM*, we will impose a principal community coverage requirement that is stronger than the DTV service contour requirement that we adopted as an initial obligation in the *5R&O*. Such a requirement will improve the reliability of service to the community of license. However, we recognize the broadcasters' need for flexibility and will require a set of signal strengths lower than we proposed in the *NPRM*. We believe an appropriate balance is achieved by requiring a DTV city grade contour that is 7 dB stronger than the DTV service contour values for the pertinent channel. This is significantly less burdensome than the proposed values which would have been at least 16 dB

stronger. The values we are adopting are as follows:

Channels	Field strength (dBu)
2–6	35
7–13	43
14–69	48

The required level of service must be achieved by December 31, 2004, for commercial stations and December 31, 2005, for noncommercial stations, the same dates by which stations must either replicate their NTSC service areas or lose protection to the unreplicated areas.

14. We base the 7 dB increment on two factors relating to improving the availability of service in the city of license. First, as with NTSC TV city grade requirements, we conclude that the percent of locations receiving service should be more than the fifty percent criteria that is the standard for the NTSC Grade B service contour, as well as for the DTV service contour. Increasing the DTV service availability to the best 70 percent of the locations requires about a 4 dB increase in field strength, if all other assumed planning factors remain the same. We believe it is also appropriate to assume that locations inside a station's community of license should not require a very high-gain receiving antenna normally necessary for fringe-area reception. For NTSC TV service, the assumed antenna gain for Grade B service is five or six dB more than the assumed antenna gain for Grade A service. Where a lower-gain antenna is assumed, correspondingly stronger field strength is required for service to be provided. DTV antenna assumptions are generally that higher gain antennas will be used than have been assumed for NTSC TV reception. Conservatively, we assume that a DTV receiving antenna for use in a station's city of license can be at least 3 dB lower gain than the assumed receiving antenna for the edge of the station's service area.

15. The improved availability we are providing for is consistent with recognizing that the DTV signal is substantially different from the NTSC signal. The NTSC signal strength degrades over distance from the transmitter, with picture quality declining accordingly. In DTV there are virtually no gradations in picture quality that are dependent on signal strength. If the signal strength is above a certain threshold it will produce an excellent picture. If the signal strength does not reach that threshold, the receiver's screen will freeze or go blank. The degree to which the signal exceeds that threshold requirement does not matter; the picture quality will not change and would not change even if we were to require that the community of license be provided with a more robust signal than that currently required. The higher signal level requirement should increase the number of locations where a good signal is present.

16. We recognize that some stations have spent time and money developing solutions to their coverage issues (*e.g.*, placing the required level of signal over their community of license, avoiding co-channel and adjacent channel interference) that may result in their not being able to encompass their principal communities with the increased city-grade signal level proposed in the *NPRM*. In some of these cases interference has been reduced through collocation that may preclude licensees from being able to encompass their communities of license with the proposed signal level. We believe the less burdensome requirement we are adopting will not force many licensees to increase their power or move their antenna resulting in increased cost. The new, scaled-down requirement will continue to allow most broadcasters the flexibility they have requested in building their DTV facilities and we expect that they will construct expeditiously to assure that consumers and viewers have the benefit of a rapid transition to digital television.

17. Our enhanced principal community signal strength standard also helps prevent the migration of licensees from their community of license, thus furthering the purposes of Section 307(b) of the Communications Act. Their public interest obligations run to their communities of license. These requirements remain undiluted by our decision herein.

D. Noncommercial Stations

18. Although we did not solicit comment on this issue in the *NPRM*, and we stated that it is too early to address the needs of public television stations in converting to DTV, AAPTS/PBS request special treatment for noncommercial educational television stations. In the *5R&O* in our DTV proceeding, we noted our commitment to noncommercial educational television and acknowledged the difficulties they would face in transitioning to DTV and which would require special relief measures. In recognition of these difficulties we stated that noncommercial stations will need and warrant special relief to assist them in the transition to DTV. We continue to believe, however, that it would be premature to attempt to resolve the issues raised, or grant the type of relief sought, by AAPTS/PBS in their comments. Furthermore, we believe that it would be beyond the scope of the *NPRM* in this proceeding to do so. As we get closer to the construction and election deadlines for noncommercial educational broadcast stations we will be in a better position to determine what further relief might be required by such stations and whether the scope of that relief needs to be on an industry-wide basis or only on a station-by-station or market-by-market basis.

E. Mutually Exclusive Applications

19. In the *NPRM*, we also addressed certain issues with respect to mutually exclusive (MX) DTV applications.

20. *DTV Cut-off Procedures*. Based upon the record in this proceeding, we conclude that the fairest and most expedient method for determining cut-off protection for DTV expansion applications is to take a bifurcated approach. With respect to all currently pending DTV expansion applications, we establish cut-off protection as of the date of the adoption of this *R&O.* Therefore, all DTV expansion applications pending as of the adoption date of this *R&O* are cut off and will be protected against later-filed DTV applications. Later-filed DTV applications must protect applications in this cut-off group. We find that this approach, which received the support of the majority of the commenters, will create a definitive pool of applicants from which both the applicants and the Commission staff can begin to resolve mutual exclusivity issues. As the Joint Broadcasters and AAPTS/PBS observe, use of a single cut-off date for all pending DTV applications will minimize the number of MX situations and facilitate applicants' planning with respect to their proposals. A single cut-off date also provides a measure of fairness to all applicants that filed DTV expansion applications prior to the adoption of the *R&O* by allowing all of them to be considered as part of one cut-off group. Because most television licensees have filed their DTV expansion applications, providing cut-off protection to all pending DTV applications will adversely affect only the limited number of licensees that will be filing such DTV applications in the future. Finally, selection of the adoption date of the *R&O* as the cut-off date will prevent a possible rush of hasty and possibly defective DTV filings filed merely to preserve rights that might

occur if we were to announce a later cut-off date.

21. Fox and KM Communications, Inc., proposed that we apply first-come, first served processing to the pending DTV applications. Under their approach, all pending DTV applications would be cut-off on the day they were filed. We decline to adopt such an approach. First, we recognize that there was an extended period of time over the past several months during which we permitted DTV applications to be filed without indication that applicants needed to expedite their filings or lose out on an opportunity to expand their DTV allotments. It would be unfair to retroactively apply first-come, first served processing to those applicants, such as noncommercial and smaller market licensees, that, as permitted, followed our staggered DTV implementation schedule and waited until their later deadlines to file their applications. In addition, we find that such an approach would not achieve the expected results. We have previously found first-come, first-served processing to be a desirable method of application processing because it avoids a large number of MX applications while also providing applicants with a level of certainty that their filing will not conflict with undiscovered earlier-filed applications. However, in this case, since so many of the pending DTV applications were filed in large batches on the same day because of Commission-mandated DTV deadlines (November 1, 1999, and May 1, 2000 being the prime examples), these applications would remain MX, with the intended benefits of first-come, first-served processing not being realized.

22. As for future DTV expansion applications filed after the adoption date of this *R&O*, we will adopt the proposal in the *NPRM* and we will consider such applications cut-off as of the close of business on the day they are filed. Under this day-to-day cut-off approach, conflicting later-filed applications would have to protect the earlier-filed, cut-off application. Unlike the case with the large number of currently pending DTV applications, we find that the benefits of this type of application processing can be realized with respect to the anticipated relatively small number of future DTV applications. Adoption of day-to-day cut-off processing for new DTV expansion applications will not only help to avoid a larger number of mutually exclusive applications the processing of which could delay expediting DTV service to the public and provide certainty for future applicants, but will also encourage potential applicants to file quickly for improved facilities and thus help speed the introduction of DTV service to the public.

23. We decline to adopt a moratorium on the filing of new DTV expansion applications, as suggested by some commenters. Since many licensees filed their DTV expansion or maximization applications by May 1, 2000, the date set by the CBPA after which such applications would have to protect on new Class A television stations, we find it unlikely that a large number of additional stations will be filing DTV expansion applications. Furthermore, the procedures we adopt herein for resolving the pending MX applications will result in an expedited resolution of such.

24. *Resolving Mutually Exclusive DTV Applications.* We find that the best approach to resolving MX DTV expansion applications is to follow our existing DTV new station application procedure. First, we will continue to identify and grant all checklist, non-checklist, and maximization applications that are not predicted to create or receive impermissible levels of interference. The staff will identify via public notice those groups of MX applications that are related either by direct or indirect mutual exclusivities. The applicants will then be permitted a period of time, as discussed below, to resolve their MX situation through engineering solutions or settlement. The applications that remain MX following this settlement period would then be dismissed. We agree with those commenters that recognized that this type of private resolution of MX situations affords the parties greater flexibility than Commission imposed solutions, and avoids the burdens of costly and more time consuming regulatory proceedings. We will not adopt the proposed ''safety valve'' proposed by the Joint Broadcasters. However, in this regard we will consider on a case-by-case basis waivers of the *de minimis* interference limits (between applications) in cases of particular hardship where MX applicants demonstrate that their DTV applications were filed because they were required to relocate their proposed facilities for zoning or technical reasons.

25. Furthermore, we decline to use auctions to resolve MX DTV applications would not serve the public interest. We stated in the *NPRM* that, while we are precluded from Section 309(j) from auctioning initial DTV replacement licenses, it does not appear that a digital area-expansion application would constitute such a replacement. Some commenters, however, pointed out that many initial applications request area-expansion. Furthermore, even those DTV expansion applications that seek to modify a DTV construction permit or seek a construction permit to change an existing DTV facility could be viewed as components of the replacement of analog television service. Therefore, it would take a time consuming, case-by-case approach to determine whether individual DTV applications were subject to auction. Given the extended length of time for such analysis, the strain on staff resources, and the difficulty in making such a determination, we find that use of auctions would not be a workable solution to resolving MX DTV groups. In addition, there are other public interest reasons why we believe that auctions would not be the best method for resolving DTV mutual exclusivity. The use of auctions could encourage applicants to take steps to avoid siting their DTV facilities in proximity to the DTV facilities of other licensees in order to avoid an MX situation and possible auction. This would undermine our stated goal of encouraging the collocation of DTV facilities and sharing of facilities. Finally, we agree with the Joint Broadcasters that auctions of DTV expansion applications could be difficult to administer since they could involve ''daisy chains'' of direct and indirect MX groupings and may cause delay to the overall DTV implementation process.

26. As for the length of the settlement period, we will limit the settlement period to 90 days during which applicants must either find an engineering solution or otherwise propose a settlement that would resolve their mutual exclusivities. These settlement periods will be announced by the staff in future public notices. While we encourage applicants to utilize all means possible to resolve their mutual exclusivities, including third-party mediation if they desire, we will not permit additional time for parties using such measures. We conclude that a 90-day settlement period strikes a fair balance between permitting applicants ample time and opportunity to resolve their mutual exclusivities and expediting the processing of pending DTV expansion applications.

27. As noted above, in addition to permitting applicants in MX groups to propose engineering solutions to resolve their mutual exclusivities, we will also permit applicants to enter into settlement agreements whereby one or more applicants may agree to change their proposed facilities or dismiss their expansion application altogether in

exchange for compensation. In an effort to provide additional flexibility and to hasten the settlement process, we will waive the provisions of 47 CFR 73.3525(a)(3) which limit the monetary settlement of pending applications to the legitimate and prudent expenses of the applicant. All other provisions of 47 CFR 73.3525 will continue to be applied to these settlements. We find that the public interest will be served by waiving the monetary limitation because it will result in the resolution of more MX DTV groups, the grant of a greater number of DTV expansion applications, and expedited DTV service to the public. We also remind DTV applicants seeking engineering solutions or settlements to resolve their MX groups, that all such engineering solutions and settlements must be submitted in writing for staff review pursuant to 47 CFR 73.623(g). As that section provides, concerning negotiated agreements on DTV interference, ''applications submitted pursuant to the provisions of this paragraph will be granted only if the Commission finds that such action is consistent with the public interest.''

28. Finally, we recognize the comments of the Joint Broadcasters that adoption of a cut-off procedure and method for resolving MX DTV applications necessarily means that we must revise our existing maximization procedures as adopted in the *Second Memorandum Opinion and Order*, 64 FR 4322, January 28, 1999 (''*2MO&O*'') in the DTV rulemaking proceeding. In that decision, we adopted a procedure whereby DTV maximization applications with power levels above 200 kilowatts would be placed on public notice and interested parties would be given 30 days to object to an expansion proposal by stating that the proposed change would impact upon their future plans to maximize their own DTV operations. The applicant and objecting party would then have 30 days to resolve the conflict and, in the event they are unable to do so, the DTV above 200 KW maximization application would be dismissed. The Joint Broadcasters are apparently concerned that, left untouched, the maximization procedures set forth in the *2MO&O* would be inconsistent with the cut-off and MX procedures we are adopting herein. We agree, and we replace the maximization procedures set forth in the *2MO&O* with our new cut-off and MX procedures. Accordingly, the temporary 200 kW cap on power increases for UHF DTV stations is no longer necessary and is removed.

29. *Application Processing/Protection Priority.* After consideration of the comments, we adopt a system of priorities similar to that proposed in the *NPRM,* and we give priority to DTV expansion applications over all NTSC applications except NTSC applications that fall into one of the following three categories: post-auction applications (*i.e.,* the long form application [FCC Form 301] filed by the winning bidder following the completion of a broadcast auction), applications proposed for grant in pending settlements, and any singleton applications cut-off from further filings. We estimate that there are approximately 20 applications in these three categories. The cut-off singleton applications remain pending for a variety of legal and technical reasons. These NTSC applications must have been accepted for filing in order to be protected from DTV expansion applications. In the future, when a party files a DTV expansion application, it must determine whether there are NTSC applications on file in any of the three above categories and provide interference protection to them. As for pending DTV expansion applications and NTSC applications, if an earlier-filed DTV expansion application conflicts with an NTSC application in one of the these three categories, we will consider these applications MX and follow our above-outlined procedures for MX applications—that is, we will require that the parties resolve their MX within 90 days or we will subsequently dismiss both applications. Additionally, we will require NTSC applications to protect facilities proposed by DTV applicants even if the DTV application was filed while the NTSC application is pending. We believe that our goal should continue to be expedited implementation of DTV service. We find that the above system of priorities will further that goal, while at the same time recognizing the need to continue to provide viable NTSC service until the DTV transition is complete and not disrupting the settled expectations of these NTSC applicants that may have relied on existing procedures in the reasonable belief that their applications would receive protection.

30. We will condition the grant of all future NTSC minor change applications on acceptance of interference from any proposed DTV facility which was filed on or before the NTSC grant date.

31. With respect to pending petitions for rule making for new or modified DTV allotments, where an *NPRM* has been adopted and the comment deadline on the petition for rule making has passed, we will consider such petitions as ''cut-off'' as of the comment deadline. In that case, if there is an earlier-filed pending DTV expansion application that conflicts with the petition, we will consider the petition and application(s) as MX and, once again, follow our above outlined procedures for MX applications. Pending DTV expansion applications that are filed after a DTV petition is cut-off on its comment deadline will have to protect the facilities proposed in the DTV petition. If the pending DTV petition has not yet been cut-off as of the adoption date of this *R&O,* then, because we will have cut off all pending DTV expansion applications, we will consider the petition and any conflicting DTV expansion applications as MX and use our above-outlined procedures to resolve them.

32. With respect to future petitions for rulemaking that are filed for new or modified DTV allotments, we will continue our current practice of providing cut-off protection to such petitions on their comment deadline. Therefore, in the future, when an interested party files a DTV expansion application, it must provide protection for any DTV rulemaking petition for which the comment deadline has passed. Also in the future, new DTV petitions will be required to protect all earlier-filed DTV expansion applications, given our newly adopted day-to-day cut-off procedure for such application.

F. Technical Issues

33. In this section, we address several comments that request action on technical issues.

34. *ATSC DTV Standard.* The Advanced Television Systems Committee (ATSC) is the organization that developed the ''ATSC DTV Standard,'' most of which we adopted as our DTV broadcast standard in the *Fourth Report and Order,* 62 FR 14006, March 25, 1997 (''*4R&O*'') in the DTV proceeding. Title 47 CFR 73.682(d) requires that broadcast DTV transmissions comply with standard ATSC Doc. A/53 dated September 9, 1995, except for its constraints on video formats. In comments, ATSC reports that, since adoption of the *4R&O,* it has made several changes to the Doc. A/53 standard including removing constraints associated with the ''program paradigm,'' updating references to the underlying MPEG standards, replacing references to obsolete ATSC standards for Electronic Program Guide and System Information with a reference to a new ATSC Doc. A/65 for Program and System Information Protocol (PSIP), and requiring a signal when colorimetry other than that defined by standard SMPTE 274M is used. The PSIP specification provides for the

transmission of system information and program guide data for broadcast DTV stations, enabling the identification of service channels and digital bit streams, and allowing receivers to generate electronic program guides. It also provides for selection through the program guide function of the type and language of closed captioning to be viewed and transmission of program ratings information to allow parents to use ''v-chip'' technology. ATSC also indicates that it is considering an increase in the maximum allowable audio bit rate.

35. ATSC urges the Commission to revise the rules to reference the latest version of the ATSC DTV Standard A/53 and to require use of the ATSC PSIP Standard A/65. ATSC further requests Commission action to assure that ''major channel numbers'' in the PSIP are used properly, the assignment of transport stream identifier (TSID) parameters is properly administered, and that closed captioning and content advisory information conforms with the PSIP Standard. ''Major channel number'' is part of the DTV bit stream specified in the PSIP standard and used to identify the terrestrial broadcast station (or cable or satellite source) providing the DTV program(s). Where a station is transmitting multiple programs, it uses ''minor channel numbers'' to distinguish among them. Within each television market, each programming source (terrestrial DTV broadcast stations as well as cable or satellite DTV channels) must have a unique ''major channel number'' so DTV receivers can be tuned to the desired stations and programs. In addition, the PSIP standard uses a ''TSID'' to uniquely identify transport streams, again to allow DTV receivers to tune between programs arriving from different sources. Finally, ATSC suggests the Commission encourage use of additional supplementary ATSC standards, including those concerning conditional access and data broadcasting.

36. In ET Docket No. 99–34, we sought comment on whether coordination committees and a national coordinator could assist in the administration of the DTV system by assigning the unique PSIP station identifier and negotiating the naming and numbering of channels among broadcasters in local markets. We continue to believe that an industry approach is generally the most appropriate means for managing the implementation of a PSIP system. However, we do recognize that the transport stream identifiers (TSIDs) must be unique to each individual television station and that there is a need to coordinate TSID assignments for stations in the border areas with our neighbors in Canada and Mexico. We therefore agree that TSID assignments should be made part of the Commission's licensing process for broadcast television stations and will begin the process to incorporate this function into that process in the near future. Until negotiations with Canada and Mexico on this matter are complete and we have modified our licensing process and records management systems, we will continue to rely on the industry to make TSID assignments.

37. *Distributed transmission and boosters.* The Merrill Weiss Group (Merrill Weiss), supported by Pappas and Penn State University, and ADC Telecommunications, urge the Commission to adopt rules for on-channel DTV boosters, including allowance for a distributed transmission system. Merrill Weiss defines distributed transmission as being similar to a cellular telephone system in that a service area is divided into a number of cells, each served by its own transmitter. Distributed transmission differs from a cellular telephone system in that all adjacent cells use the same frequency (a ''single-frequency network''). DTV boosters also retransmit the primary DTV station's same program on the same channel.

38. While we recognize the desire to initiate DTV booster operations, we believe there are fundamental issues surrounding their authorization and protection that must be addressed in a more comprehensive manner than can be accomplished based on the limited record on this issue in this proceeding. Therefore, we will defer this consideration to the rulemaking proceeding on digital LPTV and DTV translator stations that we expect to initiate within the next few months.

39. *Computer program used for application processing.* Several concerns are raised in comments about elements of the Commission's interference analysis program used in processing applications. Hammett and Edison seeks changes in the way the program treats the return of an ''Error Code 3'' message from the Longley-Rice propagation model. An ''Error Code 3'' message is given when internal Longley-Rice program calculations show parameters are out of range and that reported results are dubious or unusable. The message is returned when the calculation of the actual distance to the horizon from a given cell or transmitter location is less than 0.1 times or greater than 3 times the distance to the smooth earth horizon. Hammett and Edison also seeks a change to the program's calculation of the depression angle from a transmitting antenna to a cell and requests that the program be changed to allow use of the actual transmitting antenna elevation patterns rather than the generic pattern. AFCCE recommends that the cell size and spacing increment should be reduced as necessary to accurately depict terrain and population distribution.

40. We recognize that this is a very complicated analysis. We have found it necessary to balance ideas and recommendations for refining the program with the disruption and uncertainty that would occur when a change is made. In the case of each of these proposals, we believe that the disruption of altering the program would be more severe than warranted by the possible improvement in the accuracy of the analysis results provided by the program. In the case of the ''error code 3'' request, we note that we previously indicated that the assumption of service was appropriate where the Longley-Rice propagation model indicates that results are unreliable because it is similar to the situation where, for many purposes, all locations within an NTSC TV station's Grade B service contour are assumed to receive service. While Hammett and Edison submits the results of its study regarding the prevalence of the problem, our review of its information reveals no benefit that would warrant reversing our earlier decision.

41. We have an administrative process that relies on comparison of interference and service predictions with the analysis performed in creating the table of allotments. Recalculating the entire table would be an enormous undertaking. Additionally, reconciling calculations using a new methodology with the table calculations based on different methodology is difficult and likely to result in uncertainty in the results and contested decisions.

42. We believe the best balance of accurate interference prediction and administrative certainty can be achieved with the analytical methods that we used to develop the initial table, which is consistent with the comments of AFCCE. AFCCE recommends continuing to use the established methods of determining the grade B contour for predicting an NTSC station's service and determining a DTV service contour using the F(50,90) propagation model as the first step in predicting DTV service. AFCCE also recommends that use of Longley-Rice analysis and the relevant DTV planning factors be continued. We believe this can be best achieved by maintaining the normal processing

analysis based on the methodology established in creating the table. However, in a special case, where one of the suggested revisions would improve the accuracy of the analysis and would make a critical difference, an application may contain a showing using an alternate analysis in support of a waiver request.

43. *Release of evaluation software.* Everist requests that the Commission immediately release all software to the public that it uses in its DTV evaluation procedures. Some of the software requested by Everist is still in a development and testing phase and we believe it would be premature and, indeed, confusing to release it to the public while it is undergoing review and revision. Software that is relied upon in processing TV and DTV applications has been, and will continue to be, made available to the public in the same way that evaluation software for other video broadcast services is made available.

44. *DTV Planning Factor—Assumed Receiving Antennas.* Hammett and Edison objects to the assumed receiving antenna pattern for NTSC reception being different from the assumed receiving antenna pattern for DTV reception in OET–69 interference calculations.

45. At this time, we do not have a basis for changing these criteria. The receiving antenna assumptions were considered in the Advisory Committee on Advanced Television Systems and were part of its recommendation to the Commission. There has been no consensus developed in the industry that changing the receiving antenna assumption is appropriate. We therefore see no merit in changing the assumed NTSC and DTV antenna patterns. Also, changing the assumptions now would alter the interference analysis methodology, which, as discussed above, could disrupt processing and create uncertainty.

46. *Change in Census Population Data.* Everist asks whether the Commission will permit updated Census Bureau population estimates to be used for service and interference calculations as they become available. As a related matter, AFCCE recommends that the geographic center instead of the population centroid of each cell be used in the Longley-Rice analysis. The effect of this change would be to make the analysis of whether a cell is served or interfered-with independent of the population data the analysis is based on (because the precise location that is considered to represent the cell would be fixed at the middle of the cell and not shifted to a location that depends on the population distribution within the cell).

47. At this time, we have not made plans to convert our processing analysis to use new census data. New census data would necessitate re-evaluation of the entire DTV table to establish ''baseline'' values against which application proposals can be measured. Again as above, additional information about population shifts can be submitted with an application where such information is crucial and decisional. Also, if, in the future, we consider using new census data, we can consider then the AFCCE recommendation concerning the use of the geographic center of each cell.

48. *Maximum power clarification.* Title 47 CFR 73.622(f)(5) provides that licensees assigned a DTV channel in the initial DTV Table of Allotments may request an increase in either Effective Radiated Power (ERP) in some direction or antenna Height Above Average Terrain (HAAT) that exceeds the initial technical facilities authorized for the allotment. Such increases are limited to maximum powers specified in paragraphs (f)(6) through (f)(8) of that section. Where specified antenna HAAT values are exceeded, the maximum ERP generally is reduced in accordance with the appropriate chart or formula in those paragraphs. Paragraph (f)(5) also allows the maximum ERP and HAAT combination to be ''up to that needed to provide the same geographic coverage area as the largest station within their market, whichever would allow the largest service area.'' AFCCE, Everist and Hammett & Edison, each requests clarification of the term ''geographical coverage of the largest station in the market'' for determining maximum power and antenna.

49. We take this opportunity to clarify this rule. First, the maximum ERP limits (1000 kW for UHF channels 14–69 in any zone; 30 kW for VHF channels 7–13 in Zone 1; 160 kW for VHF channels 7–13 in Zone 2 or 3; 10 kW for VHF channels 2–6 in Zone 1; and 45 kW for VHF channels 2–6 in Zone 2 or 3) may not be exceeded. The ''largest station'' provision applies only where the rules normally require a reduction in the maximum power because a specified antenna HAAT is exceeded. That is, it does not allow power higher than the maximum ERP to compensate for an antenna HAAT that is lower than the value specified in the rule. Second, the ''largest station'' provision is only triggered where a station in the same market is serving a larger area than could be covered with the standard maximum power and antenna height specified in 47 CFR 73.622(f). Otherwise, applicants must comply with the maximum power and antenna height in that rule section. Third, for the purpose of this rule, stations in the same DMA are considered to be in the same market. Fourth, the geographical coverage determination is based on the area within the DTV station's noise-limited contour, calculated using predicted F(50,90) field strengths as set forth in 47 CFR 73.622(e) and the procedure specified in 47 CFR 73.625(b). Under this provision an application may not request a power and antenna height combination that would result in coverage of more square kilometers of area than the largest station in the market. It is not necessary that the application specify coverage that is congruent with or encompassed by the coverage area of the largest station. Stations are not expected to shift their coverage area in order to use this provision of the maximum power rules. Finally, DTV stations are still subject to the interference protection requirements, even when availing themselves of this provision.

50. *Directional Antenna Definition and Interference Creating NTSC White Areas.* Everist seeks clarification on the definition of a non-directional and a directional transmitting antenna. He also asks about incremental creation of white or underserved areas as DTV stations are authorized based on creating *de minimis* interference to the Grade B service of NTSC TV stations.

51. In both of these matters, we believe it is appropriate to continue the NTSC TV practice. Title 47 CFR 73.625(c)(2) defines a DTV directional antenna as one ''designed or altered to produce a noncircular radiation pattern in the horizontal plane * * *.'' Title 47 CFR 73.685(e) defines an NTSC TV directional antenna as one ''designed or altered to produce a noncircular radiation pattern in the horizontal plane * * *.'' Therefore, the DTV and NTSC rules defining directional antennas are identical and the practices and policies that have been applied to NTSC directional antennas will also be applied to DTV directional antennas. With regard to white area or underserved area determinations, we note that 47 CFR 73.684(a) concerning NTSC TV station prediction of coverage specifically indicates that ''predictions of coverage made pursuant to this section shall be made without regard to interference * * *.'' Therefore, as has been the case with NTSC interference, we will not consider the effect of DTV interference on analysis of white areas or underserved areas.

52. *Closed Captioning for Digital TVs.* Motorola addresses an issue of

compatibility of DTV closed captioning with an existing digital cable closed captioning technology. Motorola is concerned that this issue could lead to a delay in the DTV transition, so it includes an analysis that it also submitted in ET Docket 99–254.

53. The *R&O* in ET Docket No. 99–254, 65 FR 58467, September 29, 2000, has addressed this matter and no further action is necessary herein.

54. *NTSC Group Delay Blanket Waiver.* Hammett & Edison requests a blanket waiver of the envelope delay requirement in 47 CFR 73.687(a)(3) for NTSC stations with upper-adjacent channel DTV assignments that combine their NTSC and DTV signals and use a common transmitting antenna.

55. We agree with Hammett and Edison that a blanket waiver is appropriate for this situation. Therefore, we authorize all NTSC TV stations with a DTV signal on the first-adjacent channel above the NTSC channel and with a common transmission line and antenna, to operate at variance with the envelope delay requirements of § 73.687(a)(3) for frequencies between 3.9 and 4.2 MHz above the visual carrier.

56. *Canadian Border Zone.* AFCCE urges the Commission to resolve Canadian border zone issues in an expeditious fashion. We believe this concern has been resolved. A Letter of Understanding with Canada was signed September 12 and 22, 2000, and announced in a Public Notice released September 29, 2000.

57. *Data Base Inconsistency.* Everist is concerned that the new Mass Media Bureau Consolidated Data Base System (CDBS) should be validated. He states that where old terrain elevation data that is inconsistent with current determination of terrain elevation, it can turn an otherwise ''checklist'' application into a ''non-checklist'' application because it will show the antenna height differing from that authorized by more than ten meters.

58. Errors and inconsistencies in the CDBS that we have discovered have been corrected and resolved. However, this is an on-going process. As for the criteria for ''checklist'' treatment, we decline to alter it at this time. We now have the capability to process ''non-checklist'' applications expeditiously (and to quickly grant those applications that do not raise interference concerns and would have been considered checklist except for failing to meet the power or HAAT limits to be defined as checklist). Thus, there is not a significant benefit to an application being designated as checklist.

59. *Sanctioning a Government-Industry Committee Similar to TASO.* AFCCE recommends that the Commission sanction the formation of a government-industry advisory committee to deal with application processing issues, as well as a ''TASO''-like committee to help resolve DTV allotment and service issues. TASO is the Television Allocations Study Organization, which was formed in the 1950s by the television broadcast and consumer electronics industries at the request of the Commission to study the technical principles that should be applied in television channel allocations. At this time, we believe it is preferable to allow current industry efforts to continue without interruption. Significant activity is underway and we do not wish to slow it down or prevent it from reaching possible resolution of the issues that are being addressed. In the future, if circumstances warrant, this matter may be revisited.

60. *Method for determining 85% criteria for extending end of the transition.* California Oregon Broadcasting, Inc. urges the Commission to consider how it will implement the 85% DTV reception criteria for extending the end of the transition beyond 2006. It is too early in the transition to initiate consideration of this matter. We expect to consider it in a future review proceeding.

61. *Biological effects of RF radiation.* Carole Lomond opposes introduction of DTV signals in any residential environment until concern over biological effects of nonionizing electromagnetic radiation is resolved. Lomond provides no evidence to warrant re-evaluating our RF exposure regulations. We therefore decline to consider this issue in the context of this DTV review proceeding.

62. *Other technical issues.* Everist requests clarifications and explanations of a number of other technical matters. We are unable to address all of these in the context of this proceeding. Many of the issues he addresses have not yet arisen in processing and in the case of others his concerns are not clearly described. As these issues come up, we will resolve them individually on a case-by-case basis. If principles emerge from this practice, we will describe them in a Public Notice.

G. DTV Transmission Standard

63. In the *NPRM,* we observed that some broadcast entities had raised concerns regarding the 8–VSB modulation system used in the ATSC DTV Standard adopted by the Commission as the transmission standard for digital broadcast television signals. We stated that while we continue to believe that NTSC service replication is achievable by DTV operations using the 8–VSB standard, we recognized that some parties within the broadcast industry had recently raised various issues with respect to this standard. In particular, we noted that the Sinclair Broadcasting Group, Inc. (Sinclair) had previously filed a Petition for Expedited Rulemaking urging that we modify the rules to permit the use of an alternative modulation method, coded orthogonal frequency division multiplexing (COFDM), in addition to the 8–VSB standard. In its petition, Sinclair argued that COFDM modulation offered easier reception with simple antennas and would enable broadcasters to provide fixed, mobile and portable video services. We dismissed Sinclair's petition, indicating that we continued to believe that NTSC service replication is achievable by DTV operations using the 8–VSB standard. However, we also indicated that we would address the concerns raised by Sinclair and others about the 8–VSB modulation standard in the context of this proceeding. In the *NPRM,* we therefore invited comment on the current status of the 8–VSB DTV standard. We specifically requested comment on the progress being made to improve indoor DTV reception under the existing transmission standard and manufacturers' efforts to implement DTV design or receiver improvements. We also asked commenting parties to submit information regarding any additional studies that may have been conducted regarding NTSC replication using the 8–VSB standard.

64. Parties primarily representing some broadcast interests express continuing concern about the ability of the 8–VSB standard to support reliable reception in areas where there is strong multipath, and submit that this deficiency must be corrected. These parties generally argue that the Commission should actively investigate both 8–VSB and COFDM and should consider a change to COFDM if that system is shown to be superior to 8–VSB. Sinclair and several others continue to argue that broadcasters should be given the option to use a COFDM system for transmitting their DTV signals. Other parties representing broadcasters, consumer electronics equipment manufacturers and consumers urge the Commission to maintain the current 8–VSB modulation standard for DTV transmissions. These commenters generally state that 8–VSB is the most suitable modulation standard for DTV service for North America and that the current concerns

about reception in areas where there are high levels of multipath are being addressed through receiver improvements.

65. We also observe that a group of broadcasters, including many of those participating in the Joint Broadcasters comments, has recently completed a program of DTV receiver testing. The industry study, among other things, compared reception of 8–VSB and COFDM signals at a large number of locations in those markets. This study took measurements outdoors at the 30-foot antenna height assumed in the DTV planning factors and at 6-feet using simple antennas typical of indoor reception. Some actual indoor measurements were also taken. One of the objectives of the industry tests was to determine whether COFDM should be added to the current 8–VSB standard. The report on the industry 8–VSB/COFDM comparison tests (8–VSB/COFDM Report) indicates that at the 30-foot receive antenna height, 8–VSB was received at a greater percentage of sites than COFDM. This was true at all distances from the transmitter. In addition, 8–VSB performed better up to the furthest distances measured from the transmitters (55 miles). It also states that at the 6-foot receive antenna height, using a simple antenna, COFDM was successfully received at more sites than 8–VSB in Washington, while 8–VSB was successfully received at more sites in Cleveland. It notes that successful reception of either system at the 6-foot height was achieved at less than 50% of the test locations. The 8–VSB/COFDM Report further indicates that in the case of indoor measurements, the percentage of successful reception was similar for both 8–VSB and COFDM, with 8–VSB holding a slight advantage. However, successful indoor reception was achieved at only about 30% of the test locations.

66. Based on these test results, the industry has reaffirmed their endorsement of the VSB standard and concluded that there is insufficient evidence to add COFDM to the U.S. DTV broadcast standard. In this regard, on January 15, 2001, the Boards of Directors of MSTV and NAB issued the following joint resolution:

> With the support of 30 major broadcast organizations and the oversight of technical committees consisting of some 25 engineers representing all major technical viewpoints, the broadcasting industry concluded a comprehensive, objective and expedited series of studies and tests to determine whether COFDM should be added to the current 8–VSB standard.
>
> We conclude that there is insufficient evidence to add COFDM and we therefore reaffirm our endorsement of the VSB standard.
>
> We also conclude that there is an urgent need for swift and dramatic improvement in the performance of the present U.S. digital television system.
>
> We therefore will take all necessary steps to promote the rapid improvement of VSB technologies and other enhancements to digital television and direct the staffs to develop a plan and promptly submit it to the Boards.

In addition, our Office of Engineering and Technology (OET) is currently conducting field tests of 8–VSB reception in the Washington, DC and Baltimore market areas to independently assess the status of DTV receiver development. The OET study is examining the performance of early and improved models of DTV receivers with respect to multipath and coverage based on reception of the signals of the local DTV stations now operating in those markets. This study involves taking measurements at a large number of sites throughout these stations' service areas, including close-in urban, suburban, and rural areas located near the stations' predicted DTV service contour. Specific sites were also selected to ensure that measurements were taken in areas with moderate to strong multipath conditions. Measurements were taken outdoors at the 30-foot height and also at 7-feet using simple antennas typical of indoor reception. The interim results of the OET tests indicate that the current generation of DTV receivers are considerably improved over the early generation units, and in particular with regard to their ability to provide acceptable service in areas with moderate and strong, complex multipath signals. The OET test results also indicate that the 8–VSB system adequately meets our goals for DTV service replication, minimum interference, and spectrum recovery as set forth in the *6R&O.*

67. These new studies bear out the conclusions of the OET's *DTV Report* that the relative benefits of changing the DTV transmission system to COFDM are unclear and would not outweigh the costs or delays involved in making such a revision. Accordingly, based on our review of the record, the demonstrated improvements in DTV receiver performance, and the findings and recommendations of the industry, we find that there is no reason to revisit our decision to deny Sinclair's petition. Consequently we will not reopen the issue of the Commission's DTV standard.

H. DTV Receiver Performance Standards

68. In the *NPRM*, we discussed the desirability of setting receiver performance standards and recognized that some broadcasters have recommended that we address over-the-air DTV signal reception issues by setting receiver performance thresholds. We therefore requested comment on the desirability of adopting minimum performance levels and asked, if we were to adopt such requirements, how they should be structured, including timing considerations.

69. In the *6MO&O* in the DTV proceeding, we stated that we believe that competitive market forces will ensure that DTV receivers perform adequately. We noted that receiver performance involves trade-offs among many different factors and that manufacturers are in the best position to determine how these trade-offs should best be made to meet consumer demand. We further stated, however, that we would continue to monitor this area through the DTV implementation process and that we would take regulatory action if needed. As indicated above, DTV receiver manufacturers, driven by market forces, are continuing to make significant improvements in their products, particularly in the area of indoor reception and multipath signal handling capabilities. These efforts are consistent with our earlier assessment that those producing receivers are in the best position to determine how to make trade-offs in performance factors to best meet consumer needs. We therefore continue to believe that it would be undesirable to set rigid performance standards for DTV receivers at this time. We will, however, continue to monitor receiver issues throughout the transition and will take appropriate action on receiver standards if necessary.

A. Miscellaneous Issues

70. In the *NPRM*, we invited comment on any critical unresolved tower siting issues and how they affect the progress of the digital transition. We asked whether broadcasters are able to secure necessary tower locations and construction resources and whether and to what extent zoning disputes, private negotiations with tower owners, and the availability of tower construction resources affect the transition.

71. The comments generally affirm our preliminary assessment in the *NPRM* that, while some stations are facing problems with tower availability and/or local zoning issues, such problems do not seem to be widespread

at this time. The Commission intends to continue to monitor the situation to forestall and/or remedy problems through these entities, as requested by NAB.

72. Additionally, in the *NPRM* we invited comment on copy protection and cable compatibility issues. Recently, the Commission issued orders in other proceedings dealing with both issues, obviating the need for action to be taken herein. In our recent *FNPRM* in the navigation devices proceeding (*FNPRM* in CS Docket No. 97–80, 65 FR 58255, September 28, 2000), we noted that, unlike in the analog context, digital technology enables users to make an unlimited number of virtually perfect copies of digital content. However, digital technology also can enable copyright holders of digital content to prevent misuse of copy protected material through methods not previously available. In the *Declaratory Ruling* we found that some measure of anti-copying encryption technology is consistent with our navigation devices rules because it protects a gap where digital data would otherwise be available ''in the clear'' and subject to unrestricted digital copying. Accordingly, we clarified that the inclusion of some amount of copy protection within a host device does not violate the navigation devices rules. In the *NPRM*, with respect to cable compatibility, we invited comment on the extent to which a failure of industry parties to reach agreement on labeling of digital receivers would hinder the transition. Subsequently, in our recent *R&O* concerning compatibility between cable systems and consumer electronics equipment (*R&O* in PP Docket No. 00–67, 65 FR 64388, October 27, 2000) we adopted rules providing for the labeling of DTV receivers to ensure that consumers will be fully informed about the capabilities of DTV receivers to operate with cable television systems. We provided for labels with regard to three categories of DTV receivers, depending upon several characteristics. Because additional industry work is still required for design specifications for the Digital Cable Ready 3 category, we stated that the record would be kept open in PP Docket No. 00–67 in order to provide us with the option of incorporating these anticipated specifications into our rules at a later date. This labeling scheme will permit consumers to make well-informed decisions about DTV equipment purchases based on a clear understanding of receivers with different labels.

73. Additionally in that proceeding, we required the consumer electronics and cable television industries to report back to us on their progress in developing technical standards in two areas: Direct connection of DTV receivers to digital cable television systems, and the provision of tuning and program schedule information to support on-screen program guides for consumers. These two issues have been substantially, but not completely resolved in an agreement between the National Cable Television Association and the Consumer Electronics Association.

74. In sum, substantial progress has been made with respect to both copy protection and DTV receiver/cable compatibility. We see no need for further action at the present time in this proceeding with respect to these important issues and will continue to monitor and consider those issues in the foregoing separate proceedings.

III. Conclusion

1. At the outset of this proceeding we stated that the conversion to digital is progressing and television stations are working hard to convert to DTV. The comments we received in response to the *NPRM* have mostly further confirmed our initial impressions. We believe that the conversion is, indeed, making progress and that the actions we are taking, and proposing, herein will hasten this transition. Particularly, our choice of an early channel election for commercial licensees and our decision not to require replication of NTSC service should well conduce to allowing stations to make plans and purchase equipment at the earliest practicable times. We will continue to monitor the progress toward the DTV conversion and will in future reviews take those actions needed to accomplish a smooth transition by December 31, 2006.

IV. Administrative Matters

76. *Paperwork Reduction Act Analysis.* This *R&O* has been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

77. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act (RFA), the Commission has prepared the following Final Regulatory Flexibility Analysis (FRFA) of the possible impact on small entities of the rules adopted in this *R&O.*

78 As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The Commission sought written public comment on several issues concerning the transition to digital television (DTV), including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

79. *Need for, and Objectives of, the R&O.* As described in the *R&O*, the nation's television system is currently engaged in the transition from analog to digital television. As part of that transition, all television broadcasters will have to file applications of various types. This might create mutual exclusivities both between DTV applicants and between DTV and analog (NTSC) applicants. The Commission will have to process those applications. The rules adopted herein are needed to, and will, govern the processing of those applications.

80. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were filed in response to the IRFA.

81. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

82. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.'' As of 1992, there were approximately 85,006 local governments in the United States. This number includes 38,978 counties, cities,

and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

83. The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. According to Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, fewer than 800 commercial TV broadcast stations (65%) subject to our proposal have revenues of less than $10.5 million dollars. We note, however, that under SBA's definition, revenues of affiliates that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Therefore, our estimate may overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-television affiliated companies. It would appear that there would be no more than 800 entities affected

84. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* None. The actions taken in the *R&O* impose no reporting, recordkeeping, or other compliance requirements on television broadcast stations, large or small. Instead, this *R&O* simply alerts licensees to the procedures that the Commission will utilize in considering DTV applications and, particularly, mutually exclusive applications. Additionally, this *R&O* adopted a channel election requirement but specifically reserved the process and procedure for a future DTV periodic review. Accordingly, no reporting, recordkeeping or other compliance requirements were adopted in this *R&O* with regard to channel election.

85. *Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

86. The processes adopted in the *R&O* are designed to be as simple and inexpensive to applicants as possible, including any small entities. The revised rules call for neither auctions nor hearings, alternatives which were considered and not adopted because of the Commission's belief that, *inter alia*, such alternatives might disadvantage small entities. The Commission declined to adopt a hearing procedure to resolve disputes because such procedures are expensive, prolonged, and likely would be precluded by section 309(j) of the Communications Act. A second alternative would have been to go to an auction system. It is our belief, however, that in this situation an auction would have both caused delay and disadvantaged smaller entities. Therefore, we declined to adopt either of these alternatives.

87. During our consideration of other possible alternatives, all steps were taken to ameliorate the impact of these rules on small entities. Instead of the hearing and auction alternatives, we adopted rules that establish in cases of mutual exclusivity, that all mutually exclusive applications will be dismissed if no voluntary resolution can be arrived at within 90 days. We believe that this provision levels the playing field, and thereby protects small entities from the economic leverage that large entities could wield in either a hearing or settlement environment.

88. *Report to Congress.* The Commission shall send a copy of the *R&O* in MM Docket No. 00–39, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission shall send a copy of the *R&O* in MM Docket No. 00–39, including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *R&O* in MM Docket No. 00–39 and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

V. Ordering Clauses

89. Accordingly, pursuant to the authority contained in 47 U.S.C. 1, 2(a), 4(i), 7 and 303, part 73 of the Commission's rules, 47 CFR part 73, is amended as set forth in this *R&O.*

90. Sinclair Broadcasting Group, Inc.'s, Petition for Reconsideration of our denial of its Petition for Expedited Rulemaking, and Univision Communications Inc.'s, Petition for Expedited Rule Making submitted November 17, 1999, are denied.

91. Pursuant to the Contract With America Advancement Act of 1996, the rule amendments set forth in ''Rule Changes,'' *infra.*, shall be effective April 16, 2001.

92. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *R&O*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Radio, Television.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

Rule Changes

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

1. The Authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

2. Section 73.623 is amended by adding paragraph (h) to read as follows:

§ 73.623 DTV applications and changes to DTV allotments.

* * * * *

(h) *DTV application processing.*

(1) DTV applications pending as of January 18, 2000, are cut-off as of that date and shall be afforded the interference protection set forth in § 73.622(f) of the rules by all NTSC minor change applications and later-filed DTV applications.

(i) DTV applications pending as of January 18, 2001, must provide the requisite interference protection set forth in § 73.622(f) to:

(A) NTSC and DTV stations, construction permits and DTV allotments;

(B) Petitions for rulemaking for new DTV allotments for which a Commission announced comment period has passed prior to the filing date of the DTV application; and

(C) Earlier-filed and accepted for filing applications for new NTSC stations submitted by: post-auction winners pursuant to § 73.5005; applicants with a settlement agreement on-file with the Commission that would result in the grant of the NTSC application; and cut-off singleton applicants.

(ii) DTV applications pending as of January 18, 2001, that do not provide the interference protection set forth in

§ 73.622(f) to other DTV applications pending as of January 18, 2001, or petitions for rulemaking seeking the allotment of new DTV stations for which a Commission announced comment period has not passed, will be deemed mutually exclusive with those applications or petitions. Those applicants and petitioners will be notified by Public Notice and provided with a 90-day period of time to resolve their mutual exclusivity via engineering amendment or settlement. Those applications and petitions that remain mutually exclusive upon conclusion of the 90-day settlement period will be dismissed.

(2) DTV applications filed after January 18, 2001, shall be afforded the interference protection set forth in § 73.622(f) by all NTSC minor change applications and later-filed DTV applications. DTV applications filed after January 18, 2001, must provide the interference protection set forth in § 73.622(f) to the following:

(i) NTSC and DTV stations, construction permits and DTV allotments;

(ii) Earlier-filed DTV applications;

(iii) Petitions for rulemaking seeking the allotment of new DTV stations for which a Notice of Proposed Rulemaking has been released and the comment deadline specified therein has passed; and

(iv) Earlier-filed and accepted for filing applications for new NTSC stations submitted by: post-auction winners pursuant to § 73.5005; applicants with a settlement agreement on-file with the Commission that would result in the grant of the NTSC application; and cut-off singleton applicants.

3. Section 73.625 is amended by revising paragraph (a)(1) to read as follows:

§ 73.625 DTV coverage of principal community and antenna system.

(a) * * *

(1) The DTV transmitter location shall be chosen so that, on the basis of the effective radiated power and antenna height above average terrain employed, the following minimum F(50,90) field strength in dB above one uV/m will be provided over the entire principal community to be served:

Channels 2–6	35 dBu
Channels 7–13	43 dBu
Channels 14–69	48 dBu

* * * * *

[FR Doc. 01–3637 Filed 2–12–01; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 66, No. 30
Tuesday, February 13, 2001

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ASO–2]

Proposed Amendment to Class D Airspace, Valdosta Moody AFB, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class D airspace at Valdosta Moody AFB, GA. Beginning February 2001, the U.S. Air Force will receive the first of approximately 40 T–6 turboprop trainer aircraft at Moody AFB. When these aircraft become fully operational as student trainers, airport operations at Moody AFB will increase from approximately 39,000 operations per year to in excess of 156,000 operations per year. The training scenario required of student pilots flying the T–6 aircraft within the Visual Flight Rules (VFR) traffic pattern will necessitate an extended pattern, beyond the existing Class D airspace. This action would amend the lateral limits of the existing Class D airspace from a 5-mile radius of Moody AFB to a 7-mile radius to allow for the safe and efficient operation of these aircraft within Class D airspace.

DATES: Comments must be received on or before March 15, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 01–ASO–2, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Wade T. Carpenter Jr., Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 01–ASO–2.'' The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class D airspace at Valdosta Moody AFB, GA. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9H, dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1 The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (Air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 5000. Class D airspace.

* * * * *

ASO GA D Valdosta Moody AFB, GA [Revised]

Valdosta, Moody AFB, GA
(Lat. 30°58′07″ N, long. 83°11′35″ W)

Tha airspace extending upward from the surface, to and including 2,700 feet MSL within a 7-mile radius of the Moody AFB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on January 30, 2001.

Wade T. Carpenter,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 01–3649 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–24]

Proposed Modification of Class E Airspace, Jackson Hole, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Class E airspace at Jackson Hole, WY. Newly developed approach and departure procedures at the Jackson Hole Airport has made this proposal necessary. Additional Class E 700-feet, and 1,200 feet controlled airspace, above the surface of the earth is required to contain aircraft executing the Instrument Landing System (ILS) Runway (RWY) 18 Standard Instrument Approach Procedure (SIAP) and the Geyser One and JACHO One Departure Procedures (DP) at Jackson Hole Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Jackson Hole Airport, Jackson Hole, WY.

EFFECTIVE DATES: Comments must be received on or before March 30, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–24, 1601 Lind Avenue SW., Renton, Washington 98055–4506.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–24, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–ANM–24.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Jackson Hole, WY. Newly developed approach and departure procedures at the Jackson Hole Airport have made this proposal necessary. Additional Class E 700-feet, and 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the Instrument Landing System (ILS) Runway (RWY) 18 Standard Instrument Approach Procedure (SIAP) and the Geyser One and JACHO One Departure Procedures (DP), at Jackson Hole Airport, has made this proposal necessary. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Jackson Hole Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 11013; 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, when promulgated, will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

ANM WY E5 Jackson Hole, WY [Revised]

Jackson Hole Airport, WY
(Lat. 43° 36′ 23″N., long 110°44′17″W.)
Jackson VOR/DME
(Lat. 43° 36′30″N., long. 110°44′05″W.)

That airspace extending upward from 700 feet above the surface within the 4.3-mile radius of the Jackson Hole Airport, and within 4.4 miles west and 8.3 miles east of the Jackson VOR/DME 200° radial extending from the VOR/DME to 21.4 miles south of the VOR/DME, and within 4.4 miles each side of the 020° radial from the Jackson VOR/DME extending to 17.8 miles; and that airspace extending upward from 1,200 feet above the surface within 15.2 miles west and 18.7 miles east of the Jackson VOR/DME 020° radial extending from the VOR/DME to 44.6 miles north of the VOR/DME, and that airspace west of the Jackson VOR/DME bounded on the northwest by the southeast edge of V–520 extending to 15.2 miles in an arc counterclockwise to the northwest edge of V–465, and that airspace to the south of the Jackson VOR/DME bounded on the northwest by the southeast edge of V–465, on the east by the southwest edge of V–328, on the south by the north edge of V–4 and on the west by long. 112°00′00″W; and that airspace east of the Jackson VOR/DME between the 052° radial and 155° radial extending to 33.1 miles; and excluding that airspace within Federal airways; the Big Piney, WY; the Rock Springs, WY; the Driggs, ID, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on January 31, 2001.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–3644 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–25]

Proposed Modification of Class E Airspace, Cody, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace at Cody, WY. Newly developed Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 22 at the Yellowstone Regional Airport has made this proposal necessary. Additional Class E 700-feet, above the surface of the earth is required to contain aircraft executing the RNAV SIAP at Yellowstone Regional Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Yellowstone Regional Airport, Cody, WY.

DATES: Comments must be received on or before March 30, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–25, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–25, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–ANM–25.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the docket number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by modifying Class E airspace at Cody, WY. A newly developed RNAV SIAP RWY 22 approach procedure at the Yellowstone Regional Airport has made this proposal necessary. Additional Class E 700-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV SIAP RWY 22 at Yellowstone Regional Airport. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments.

The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Yellowstone Regional Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 11013; 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

ANM WY E5 Cody, WY [Revised]

Cody, Yellowstone Regional Airport, WY
(Lat. 44°31′12″N., long. 109°01′27″W.)

That airspace extending upward from 700 feet above the surface within the 7-mile radius of the Yellowstone Regional Airport, and from the 020° bearing from the airport clockwise to the 120° bearing from the airport extending to 13.4-miles.

* * * * *

Issued in Seattle, Washington, on January 31, 2001.

Dan A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–3646 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ANM–22]

Proposed Revision of Class E Airspace, Poplar, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise Class E airspace at Poplar, MT. The development of new Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) to Runway (RWY) 27 and RWY 9 at Poplar Airport has made this proposal necessary. Class E 700 foot, and 1,200 foot controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV RWY 27 and RWY 9 SIAP to Poplar Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Poplar Airport, Poplar, MT.

DATES: Comments must be received on or before March 30, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 00–ANM–22, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the Office of the Regional Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 00–ANM–22, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–ANM–22.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of

Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class C airspace at Poplar, MT. Newly developed RNAV SIAPs to RWY 27 and RWY 9 at Poplar Airport have made this proposal necessary. Controlled airspace from 700 feet, and 1,200 feet, above the surface is required to contain aircraft executing the RNAV RWY 25 SIAP. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under IFR at the Poplar Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published in Paragraph 6005, of FAA order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. 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 11013; 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, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

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

* * * * *

ANM MT E5 Poplar, MT

Poplar Airport, MT
(Lat. 48°07′00″N., long. 105°11′17″W.)

That airspace extending upward from 700 feet above the surface within 9.1 mile radius of the Poplar, MT, airport and within 2.5 miles each side of the 285° bearing extending to 11.5 miles; and within 2.5 miles of the 105° bearing from the airport extending to 11.5 miles; and that airspace extending upward from 1,200 feet above the surface bounded by a line from lat. 47°53′25″N., long. 105°52′50″W., to lat. 48°18′00″N., long. 105°52′50″W., to lat. 48°18′00″N., long. 104°30′00″W., to lat. 47°53′25″N., long. 104°30′00″W., to the beginning; excluding that airspace within Federal Airways and the Wolf Point, MT Class E airspace.

* * * * *

Issued in Seattle, Washington, on January 30, 2001.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 01–3648 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AAL–08]

RIN 2120–AA66

Proposed Establishment of Colored Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to establish two colored Federal airways, Amber-5 (A–5) and Amber-6 (A–6) in Alaska. The FAA is proposing this action to improve the management of air traffic operations in Alaska and enhance safety.

DATES: Comments must be received on or before March 30, 2001.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AAL–500, Docket No. 00–AAL–08, Federal Aviation Administration, 222 West 7th Avenue, #14, Anchorage, AK 99533.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 00–AAL–08.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained

in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Federal Register's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Superintendent of Document's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the notice number of the NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, and request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 (part 71) to establish two colored Federal airways, A–5 and A–6, in Alaska. Presently there is an uncharted nonregulatory route that uses the same routing as the proposed Colored Federal Airway, A–6. This uncharted nonregulatory route is used daily by commercial and general aviation aircraft. The FAA is proposing to convert this uncharted nonregulatory route to the Colored Federal Airways to add to the instrument flight rules (IFR) airway and route structure in Alaska.

Colored Federal Airway A–5 is being proposed as a result of a request from Northern Air Cargo to establish a low altitude route between Evansville NDB and Point Lay NDB. This change is necessary to improve the IFR airway structure that supports existing commercial services.

These routes would provide a means to establish an airway structure to support the existing commercial services in Alaska, where currently a limited airway structure exists. Additionally, adoption of these Federal airways would: (1) Provide pilots with minimum en route altitudes and minimum obstruction clearance altitudes information; (2) establish controlled airspace thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (3) improve the management of air traffic operations and thereby enhance safety.

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

Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The colored Federal airways listed in this document would be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

Paragraph 6009(c) Amber Federal Airways

* * * * *

A–5 [New]

From Evansville, AK, NDB to Point Lay, AK, NDB.

A–6 [New]

From Evansville, AK, NDB to Ambler, AK, NDB.

* * * * *

Issued in Washington, DC, on January 23, 2001.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 01–3641 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–121109–00]

RIN 1545–AY52

Disclosure of Return Information to the Bureau of the Census

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of **Federal Register**, the IRS is issuing temporary regulations relating to additions to the list of items of information disclosed to the Bureau of the Census for use in the Longitudinal Employer-Household Dynamics (LEHD) project and the Survey of Income and Program Participation (SIPP) project. These regulations provide guidance to IRS and Social Security Administration (SSA) personnel responsible for disclosing the information. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written and electronic comments and requests for a public hearing must be received by May 14, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG–121109–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to CC:M&SP:RU (REG–121109–00), Courier's Desk, Internal Revenue

Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: http://www.irs.ustreas.gov/tax__regs/reglist.html.

FOR FURTHER INFORMATION CONTACT: Stuart Murray, (202) 622–4580 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Under section 6103(j)(1), upon written request from the Secretary of Commerce, the Secretary is to furnish to the Bureau of the Census (Bureau) tax return information that is prescribed by Treasury regulations for the purpose of, but only to the extent necessary in, structuring censuses and national economic accounts and conducting related statistical activities authorized by law. Section 301.6103(j)(1)–1 of the regulations further defines such purposes by reference to 13 U.S.C. Chapter 5 and provides an itemized description of the return information authorized to be disclosed for such purposes. Section 301.6103(j)(1)–1(b)(5) of the regulations provides a list of information provided to the Social Security Administration (SSA) pursuant to Internal Revenue Code section 6103(l)(1)(A) or (5) that officers or employees of SSA may disclose to the Bureau. Periodically, the disclosure regulations are amended to reflect the changing needs of the Bureau for data for its statutorily authorized statistical activities.

This document contains proposed amendments to the regulations authorizing IRS and SSA personnel to disclose additional items of return information that have been requested by the Secretary of Commerce for specified purposes related to the LEHD and SIPP projects.

The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the 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.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulation and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Jamie G. Bernstein, Office of the Associate Chief Counsel, Procedure & Administration (Disclosure & Privacy Law Division), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

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

Section 301.6103(j)(1)–1 also issued under 26 U.S.C. 6103(j)(1); * * *

Par. 2. Section 301.6103(j)(1)–1 is amended by:

1. Adding paragraphs (b)(2)(v) and (vi).
2. Adding paragraphs (b)(3)(xxiii), (xxiv), (xxv), (xxvi), (xxvii) and (xxviii).
3. Adding paragraphs (b)(5)(iii), (iv), and (v).
4. Revising paragraph (e).

The additions and revision read as follows:

§ 301.6103(j)(1)–1 Disclosure of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

* * * * *

(b) * * *

(2)(v) and (vi) [The text of proposed paragraphs (b)(2)(v) and (vi) is the same as the text of § 301.6103(j)(1)–1T(b)(2)(v) and (vi) published elsewhere in this issue of the **Federal Register**].

(3) [The text of proposed paragraphs (b)(3)(xxiii), (xxiv), (xxv), (xxvi), (xxvii) and (xxviii) is the same as the text of § 301.6103(j)(1)–1T(b)(3)(xxiii), (xxiv), (xxv), (xxvi), (xxvii) and (xxviii) published elsewhere in this issue of the **Federal Register**].

* * * * *

(5)(iii), (iv), and (v) [The text of proposed paragraphs (b)(5)(iii), (iv), and (v) is the same as the text of § 301.6103(j)(1)–T(b)(5)(iii), (iv), and (v) published elsewhere in this issue of the **Federal Register**].

* * * * *

(e) [The text of proposed paragraph (e) is the same as the text of § 301.6103(j)(1)–T(e) published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner of the Internal Revenue.

[FR Doc. 01–1990 Filed 2–12–01; 8:45 am]

BILLING CODE 6830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–6940–7]

Project XL Site-Specific Rulemaking for the Autoliv ASP Inc. Facility in Promontory, Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; request for comment.

SUMMARY: The Environmental Protection Agency (EPA) is proposing in this rule to implement a project under the Project XL program that would provide site-specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), for the Autoliv ASP Inc. (Autoliv) facility in Promontory, Utah. The principal objective of this XL Project is to explore the benefits of a more streamlined and flexible RCRA regulation of pyrotechnic hazardous wastes from the automobile airbag industry that are treated in industrial furnaces. This proposed rule would

provide regulatory flexibility to Autoliv in the form of a conditional exemption from the definition of hazardous waste. The terms of the project are defined in the Final Project Agreement (FPA) which was made available for public review and comments through a **Federal Register** notice on August 14, 2000 (65 FR 49571) and signed on September 20, 2000 by Autoliv, Box Elder County, the state of Utah, and EPA.

DATES: *Public comments:* Comments on the proposed rule must be received on or before March 6, 2001.

Public Hearing: Commenters may request a public hearing by February 20, 2001, during the public comment period. Commenters requesting a public hearing should specify the basis for their request. If EPA determines that there is sufficient reason to hold a public hearing, it will do so by February 27, 2001, during the last week of the public comment period. Requests for a public hearing should be submitted to the address below.

ADDRESSES: *Comments:* Written comments should be mailed to the RCRA Information Center Docket Clerk (5305W), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please send an original and two copies of all comments, and refer to Docket Number F–2001–AUFP–FFFFF.

Request to Speak at Hearing: Requests for a hearing should be mailed to the RCRA Information Center Docket Clerk (5305G), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please send an original and two copies of all comments, and refer to Docket Number F–2001–AUFP–FFFFF. A copy should also be sent to Ms. Mary Byrne at U.S. EPA Region 8 (8P–R), 999 18th Street, Suite 300, Denver, CO 80202–2466.

Viewing Project Materials: A docket containing the proposed rule, the signed FPA, supporting materials, and public comments is available for public inspection and copying at the RCRA Information Center (RIC), located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The RIC is open from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding federal holidays. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. Refer to RCRA docket number F–2001–AUFP–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the world wide web at http://www.epa.gov/projectxl/.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 8 Library, First Floor, 999 18th Street, CO 80202–2466 during normal business hours. Persons wishing to view the duplicate docket at the Denver location are encouraged to contact Ms. Mary Byrne in advance, by telephoning (303) 312–6491.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Byrne, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 300, Denver, CO 80202–2466. Ms. Byrne can be reached at (303) 312–6491 *or byrne.mary@epa.gov.* Further information on today's action may also be obtained on the world wide web at http://www.epa.gov/projectxl/.

SUPPLEMENTARY INFORMATION: The development and implementation of on-site treatment would be piloted at Autoliv's Promontory, Utah facility using the existing metals recovery furnace with air pollution controls instead of sending the materials off-site to be open burned. This pilot is intended to test the effectiveness of on-site treatment of automobile airbag waste pyrotechnics in Autoliv's Metals Recovery Furnace (MRF). These automobile airbag waste pyrotechnics generated on-site at the Autoliv facility, are currently regulated as reactive hazardous wastes (waste code D003).

The pilot will determine whether this approach promotes better treatment of the waste pyrotechnics than the current method of open burning. Autoliv will comply with many of the general facility standards of RCRA, and is not seeking relief from all RCRA management protections. Through this project, Autoliv intends to be able to treat waste pyrotechnics, generated on-site, without obtaining a RCRA permit from the state of Utah. A RCRA permit is normally required for thermal destruction of hazardous waste in an industrial furnace. The waste as referenced in Autoliv's Project Proposal is reactive only and does not contain significant amounts of hazardous constituents listed in 40 CFR Part 261, for more detailed information on waste composition please see http://www.epa.gov/projectxl/Autoliv/page2.htm.

This proposed rule provides a ''conditional exemption'' from the definition of hazardous waste, for the specific waste that is subject to this proposed site-specific rule. The effect of EPA granting the conditional exemption is that a RCRA permit will not be required. The waste pyrotechnics, generated on-site at the Autoliv facility, will be conditionally exempted from regulation as hazardous wastes and thus, 40 CFR Parts 262 through 270 when treated in the MRF in accordance with the provisions in this proposed site-specific rule. The facility will continue to comply with certain general RCRA conditions on facility operations, as described in this site-specific rule for the Autoliv Facility and any state of Utah regulations that grant the conditional exemption. The project signatories believe that processing pyrotechnic materials in the MRF can be both cost-effective and achieve superior environmental results as compared to open burning and this project meets the intent of Project XL.

This proposed rule will not in any way impact the provisions or applicability of any other existing or future regulations.

The deferral of specified RCRA requirements is in effect only for the five-year term of this XL project. Following review of its MRF, Autoliv would notify the state of Utah and EPA in writing of the date on which it intends to begin treating its pyrotechnic waste in the MRF. This proposed rule would become effective in Autoliv's facility only after such written notification. Section III.C.2. and IV.F.1. discuss the aspects of state implementation of this proposed rule.

The deferral of the specified RCRA requirements is conditional upon Autoliv's implementation and compliance with the conditions set forth in 40 CFR 261.4 of this proposed rule. The agreement includes specific requirements for the management of Autoliv's waste that ensure protection of human health and the environment while providing some flexibility to encourage chemical reuse and waste minimization.

The conditions set forth in this proposed rule are expected to function as an outline of the procedures that must be in place to manage waste. The proposed deferral of the hazardous waste determination is conditional on compliance with all of the requirements of the XL Project. These criteria ensure that the handling and disposal of Autoliv's waste would be protective of human health and the environment by establishing how Autoliv's waste would be treated within its Promontory facility, and in transit to the on-site waste accumulation area for Autoliv.

EPA has agreed to allow Autoliv to undertake this XL project with the requested regulatory flexibility to determine if the proposed performance-based approach would result in superior environmental performance and significant cost savings to Autoliv.

This proposed rule, and the state actions described in Section IV.F.1. of this preamble that parallel this action, will not in any way affect the provisions or applicability of any other existing or future regulations.

EPA is soliciting comments on this proposed rule. EPA will publish responses to comments. The XL Project will enter the implementation phase after the initial stack test results have been submitted by Autoliv and reviewed by both EPA and the state of Utah to ensure adherence to the XL Project.

Outline of Today's Document

The information presented in this preamble is organized as follows:

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J. Does this Rule Comply with the National Technology Transfer and Advancement Act of 1995 (NTTAA)?

I. Authority

EPA is publishing this proposed rule under the authority of sections of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act (RCRA). (Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.)

II. Overview of Project XL

Project XL—''eXcellence and Leadership''— was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce regulatory burden and promote economic growth while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other Project XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories; facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements, on the condition that they produce and demonstrate superior environmental performance.

The XL program is intended to allow EPA to experiment with potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. As part of this experimentation, the EPA may try out approaches or legal interpretations that depart from or are even inconsistent with longstanding Agency practice, so long as those interpretations are within the broad range of discretion enjoyed by the Agency in interpreting statutes that it implements. The EPA may also modify rules, on a site-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute.

Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. In announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and interpretations, on a limited, site-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (provided that the Agency acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing re-evaluation of environmental programs, is reflected in a variety of statutory provisions, such as section 8001 of RCRA.

To participate in Project XL, applicants must develop alternative pollution reduction strategies pursuant to eight criteria: Superior environmental performance; cost savings and paperwork reduction; local stakeholder involvement and support; test of an innovative strategy; transferability; feasibility; identification of monitoring, reporting and evaluation methods; and avoidance of shifting risk burden. They must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL criteria, readers should refer to the two descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995 and 62 FR 19872, April 23, 1997), and the December 1, 1995 Principles for Development of Project XL Final Project Agreements document. For further discussion as to how Autoliv XL project addresses the XL criteria, readers should refer to the Final Project Agreement available from the EPA RCRA docket or Region 8 library for this action (see **ADDRESSES** section of today's preamble).

The Project XL program is compartmentalized into four basic phases: the initial pre-proposal phase where the project sponsor comes up with an innovative concept that they would like to consider as an XL pilot, the second phase where the project sponsor works with EPA and interested stakeholders in developing an XL proposal, the third phase where EPA, local regulatory agencies, and other interested stakeholders review the XL proposal, the fourth phase where the project sponsor works with EPA, local regulatory agencies, and interested stakeholders in developing a Final Project Agreement (FPA) and legal mechanism. After the FPA has been signed by all designated parties, the XL pilot proceeds into the implementation phase and evaluation phase.

The FPA is a written agreement between the project sponsor and regulatory agencies. The FPA contains a detailed description of the proposed pilot project. It addresses the eight Project XL criteria, and the expectation of the Agency that this XL project will meet those criteria. The FPA identifies performance goals and indicators (monitoring schedule) which will enable Autoliv to clearly illustrate the baseline quantities. The FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits. The FPA also discusses the administration of the agreement, including dispute resolution and termination. The FPA is available for review in the docket for today's action, and also is available on the world wide web at http://www.epa.gov/projectxl/.

III. Overview of the Autoliv XL Project

Autoliv is proposing to develop, evaluate and implement, an alternative to open burning of certain wastes generated at its Promontory, Utah facility.

This waste is reactive only, and contains no significant levels of hazardous constituents. These reactive hazardous wastes are presently treated through open burning at a RCRA interim status facility.

Autoliv currently operates a $3 million Metals Recovery Facility (MRF) designed to recover aluminum and steel from inflator units containing live pyrotechnic material as well as previously fired units. The MRF is capable of recovering 2000 pounds per hour of recyclable aluminum and steel from off-spec and fired commercial inflator units and their components while minimizing the waste to the environment. Autoliv's XL Project proposes to process small volumes of its waste pyrotechnic materials within the MRF rather than sending the materials to a RCRA regulated treatment, storage or disposal facility (TSDF) for open burning. The company is seeking a conditional exemption from the definition of hazardous waste for pyrotechnic materials to be processed through the MRF.

The MRF has an extensive air pollution train which is capable of capturing the particulate emissions produced by the waste pyrotechnic materials. The proposed project will demonstrate that it is feasible to utilize existing equipment to process certain hazardous wastes in a more efficient and environmentally sound manner, under a more flexible regulatory framework. With minimal modifications to the operation, Autoliv believes that it can achieve a safer, cleaner, and more effective method of treatment than the current method of open burning.

EPA anticipates that this project will provide information on how to develop alternative approaches to handling pyrotechnic waste. This information would be useful to EPA in learning more about alternative treatment approaches for airbag manufacturing wastestreams. This XL Project would include conditions for the treatment of Autoliv's wastes within Autoliv's Promontory Facility. These criteria will operate at Autoliv's Promontory facility in lieu of the requirements found at 40 CFR 261.4. The conditions are a set of measurable requirements that are similar to the current RCRA requirements. Each of the elements of the conditions is described in full in today's proposed rule and is briefly explained below.

The proposed requirements for Autoliv's XL Project include a requirement that the project include procedures to assure compliance with conditions specified in the proposed rule. The proposed conditions set forth for the treatment of Autoliv's waste have been designed to ensure that Autoliv's waste will be treated in a manner protective of human health and the environment. The requirements in the conditions include provisions which are consistent with current RCRA requirements. Autoliv is proposing that EPA explore the benefits of more streamlined and flexible RCRA regulation of pyrotechnic hazardous wastes from the automobile airbag industry that are treated in industrial furnaces. The project signatories agree that this rule can be characterized as a conditional exemption from the definition of hazardous waste.

Autoliv will comply with many of the general facility standards of RCRA, and is not seeking relief from all RCRA management protections. Through this project Autoliv intends to be able to treat its waste pyrotechnic materials on-site without obtaining a RCRA Part B permit from the State of Utah that is normally required for thermal treatment. The waste as referenced in Autoliv's Project Proposal is reactive only and does not contain significant amounts of hazardous constituents (See the Environmental Performance Summary Calculations section of the Autoliv Proposal at *http://www.epa.gov/projectxl/Autoliv/page2.htm.* for more detailed information on waste composition).

A. To What Autoliv Facility Would the Proposed Rule Apply?

This proposed rule would apply only to the Autoliv ASP Inc. (Autoliv) facility in Promontory, Utah.

B. What Are the Environmental Benefits of This Project?

This project is designed to achieve environmental results that are superior to what is currently achieved by the current RCRA regulatory system.

This project is expected to achieve superior environmental results as compared to open burning for several reasons. The major benefit to the environment will be from reduced air emissions due to the minimization of open burning of hazardous waste. The company has arranged for open burning of 183,557 lbs. of pyrotechnic material that were not able to be recovered or recycled during 1998 and 1999. The uncontrolled particulate emissions are a point of concern for all parties involved. Although open burning is an approved method for treatment of pyrotechnic wastes it does not utilize any air pollution controls. The same pyrotechnic materials, if processed at the MRF, would pass through an extensive air pollution control system rather than being emitted, thus achieving a significant reduction of air pollutants released to the environment, accomplishing superior environmental performance compared to open burning. The company projects that it can eliminate open burning of 158,000 lbs. of pyrotechnic waste material in the first year of project participation. It also estimates that a net reduction of 22,876 lbs./yr. of particulate emissions would be accomplished.

Additional environmental benefits are achievable due to the fact that certain pyrotechnic formulations contain materials (e.g., copper) that could be potentially recovered in the slag as well as in the baghouse. These materials could then be recycled back to Autoliv's

raw material suppliers. The distinctive properties of the pyrotechnic materials enable these materials to be treated more efficiently and in a manner that creates few air emissions than open burning which precludes recycling or recovery of any kind.

The specifications governing the air bag industry are very stringent and do not allow the use of toxic materials. The major gases produced by gas generants are water, carbon dioxide, and nitrogen. The percentage of each of these gases can vary depending on the formulation but a typical analysis would be approximately 40% nitrogen, 40% water, and 20% carbon dioxide. Other gaseous and particulate (metal) compounds are present at ppm levels. These include gaseous carbon dioxide (CO), nitrogen dioxide (NO_2), nitric oxide (NO), and ammonia (NH_3), and particulate matter containing the metals copper, cobalt, boron, and aluminum. The MRF is presently permitted by Utah (DAQE–549–97) to operate 24 hours/day, 365 days/year. Actual operation is estimated to be 50 percent of the permitted production capacity. A portion of the processing capacity will be absorbed by pyrotechnic waste material. Minimal changes to the emission streams are expected because the pyrotechnic materials are also present within the recycled inflator units themselves.

C. What Regulatory Changes Will Be Necessary To Implement This Project?

1. Federal Regulatory Changes

This proposed rule would provide Autoliv with a temporary conditional exemption from 40 CFR 261.4. In order to implement this project, EPA will grant a conditional exemption from the definition of hazardous waste, for the specific waste that is subject to this rule. The effect of EPA granting the conditional exemption is that a RCRA Part B permit will not be required. The waste pyrotechnics, generated on-site at the Autoliv facility, will be exempted from regulation as a hazardous waste exempt from 40 CFR Parts 262 through 270 when treated in the MRF in accordance with the provisions in the site-specific rule. The facility will continue to comply with certain general RCRA conditions on facility operations, as described in this Project XL site-specific rule for the Autoliv facility and any State of Utah regulations that grant the conditional exemption. The project signatories believe that processing pyrotechnic materials in the MRF can be both cost-effective and achieve superior environmental results as compared to open burning.

This site-specific rule is necessary to allow for the temporary conditional exemption/deferral, and would add exclusion (b)(18) to 40 CFR 261.4 to clarify that the on-site treatment of Autoliv's wastes would be covered by a new section to 40 CFR.

2. State Regulatory Changes

The State of Utah is authorized under Section 3003 of RCRA (Sec. 6926. Authorized State Hazardous Waste Programs), to implement the federal RCRA Program. The state program operates in lieu of the federal program. The Utah hazardous waste management regulations, codified in Utah Code of Regulations contain equivalent or more stringent requirements as compared to the federal regulations. Autoliv is subject to the federal and the Utah regulations, which would include requirements that the pyrotechnic waste be handled according to the waste management provisions of RCRA. Conforming state regulatory changes or legal mechanisms need to be implemented in addition to the proposed federal changes in order for this XL Project to proceed.

D. Why Is EPA Supporting This New Approach to Autoliv's Waste Treatment?

EPA is supporting this regulatory model contained in this rule because it provides for a degree of environmental protection that is at least as protective as that which existing RCRA regulations would provide for the Autoliv's Promontory facility. The approach to be tested under this project would be to explore the efficacy of treating waste on-site in cases where there is a clear benefit to the environment for doing so. This would entail the substitution of current RCRA permitting requirements outlined in 40 CFR Parts 264 and 266 with those for interim status facilities. EPA is interested in testing and evaluating alternative approaches to regulating RCRA facilities that can achieve superior environmental performance while reducing costs and paperwork burden. Autoliv has a history of implementing waste minimization techniques and practices with control over manufacturing with emphasis on quality and waste minimization. Providing Autoliv the flexibility to dispose of waste on a regular schedule means professional resources can be redirected from reactive waste management to proactive waste management.

EPA anticipates that this proposed rule will result in a successful innovative pilot of a new on-site treatment system for Autoliv. EPA recognizes that the proposed new systems may not be appropriate or necessary for some institutions but may, at some point, depending on the results of this XL project, consider the possibility of offering it as a regulatory option.

For this pilot, Autoliv will be implementing an Environmental Reinvestment Project (ERP) that will be finalized one year from the project start date.

E. How Have Various Stakeholders Been Involved in This Project?

Stakeholder involvement during the project development stage was encouraged in several ways. The methods included communicating through the media, directly contacting interested parties and offering an educational program regarding the regulatory requirements impacted by the XL project. Stakeholders have been kept informed on the project status via mailing lists, newspaper articles, public meetings and the establishment of a website. Both local and regional stakeholders have expressed support for this project. They see this as a unique opportunity to improve the air quality in Box Elder County and surrounding communities. Participation in Project XL provides Autoliv, the Box Elder County, the Utah Division of Environmental Quality and the EPA the opportunity to explore new ways to improve the environment. The neighboring community of Howell and the surrounding area would benefit by reducing emissions associated with open burning. The highly visible nature of open burning tends to heighten awareness of the associated environmental impacts. A kickoff meeting and site tour held on June 8th, 1999 garnered stakeholder support and input for the project plan. Additional stakeholder meetings will be held as appropriate.

Stakeholders that have been active in the project and have given oral or written support are: Utah Division of Environmental Quality, Bear River Health Department, Howell City, and Box Elder County. Stakeholders have been made aware of Autoliv's intentions and the environmental benefits associated with Project XL. Autoliv will continue to provide the stakeholder group with any information regarding the project including semi-annual project updates and will encourage them to meet on a regular basis.

Copies of all comment letters, as well as EPA's response to comment letters, will be located in the rulemaking Docket (see the **ADDRESSES** section of today's preamble). As this XL project continues

to be implemented, the stakeholder involvement program would shift its focus to ensure that: (1) Stakeholders are apprised of the status of project implementation and (2) stakeholders have access to information sufficient to judge the success of this Project XL initiative. Anticipated stakeholder involvement during the term of the project will likely include other general public meetings to present periodic status reports, availability of data and other information generated. In addition to the state and federal reporting requirements of today's rulemaking, the FPA includes provisions whereby Autoliv will make copies of interim project reports available to all interested parties. A public file on this XL project has been maintained at the website *http://www.epa.gov/projectxl/* throughout project development, and Autoliv has committed to continue to update it as the project is implemented.

A detailed description of this program and the stakeholder support for this project is included in the FPA, which is available through the docket or through EPA's Project XL site on the Internet (see **ADDRESSES** section of this preamble).

F. How Will This Project Result in Cost Savings and Paperwork Reduction?

The waste treatment currently accounts for the most substantial expense for environmental, health and safety programs at Autoliv. This XL Project would result in cost savings and paperwork reduction in several key areas. These include a decrease in paperwork through a streamlined process for approval of hazardous waste treatment, elimination of paperwork related to transporting the waste off-site to a permitted facility, and a reduction in the disposal costs that the company would pay to a RCRA treatment or disposal facility. Autoliv disposed of 82,361 lbs. of pyrotechnic waste in 1998 at an incurred cost of $164,722. The pyrotechnic waste could easily have been processed in the MRF with minimal additional operating cost. Autoliv estimates that 158,000 lbs. of waste material will be generated in the year 2000. The contracted disposal fee at present time is $2.00 per pound. Through Project XL, Autoliv will save an estimated $316,000 in disposal costs in the first year. It has been estimated that issuance of a RCRA permit may take three to five years and may cost the facility $500,000. Part of Autoliv's cost savings from the XL project will be used to fund an ERP.

In addition, the following changes would be anticipated: waste pyrotechnics would no longer be transported across public roads, reducing potential liability and associated costs, and increasing public safety. The paperwork burden would be reduced because hazardous waste manifests and shipping papers would not be required or needed. Operational flexibility would allow materials to be processed more regularly, which further reduces paperwork as well as the amount of pyrotechnics stored at any given time. It is expected with this project a certain amount of paperwork associated with RCRA compliance is likely to be reduced.

G. How Will the Terms of This XL Project and Proposed Rule Be Enforced?

EPA retains its full range of enforcement options under this proposed rule. The conditional exemption of certain RCRA requirements are conditional upon Autoliv's implementation and compliance with the conditions set forth in 40 CFR 261.4 of this rule (b) (18).

If the conditions for the exemption are not met, the XL project may be terminated pursuant to the terms of the Final Project Agreement setting out the agreement of the parties to this project. The final project agreement further provides for a return to compliance with any regulations deferred under the project, and may include an agreed-upon interim compliance period.

As with all XL projects, testing alternative environmental protection strategies, the term of the Autoliv XL project is one of limited duration. This proposed rule would set the term of the XL Project at five years after the effective date of this rule. Because Project XL is a voluntary and experimental program, the FPA contains provisions that allow the project to conclude prior to the end of the five years in the event that it is desirable or necessary to do so.

During the five year project term, Autoliv will comply with the following:

(1) Autoliv will comply with the Project XL site-specific rule for the Promontory facility and the requirements specified in 40 CFR Part 262, Part 265, Subparts B, C, D, E, G, H, I, and O, and Part 268. Waste material will still be managed and stored as hazardous waste prior to treatment. Autoliv will comply with the RCRA 90-day storage requirements.

(2) All waste materials processed will be characterized and an initial stack test described in the site-specific rule will be conducted by Autoliv to evaluate the safety and the efficiency of the MRF system.

(3) The amounts of pyrotechnic wastes will be reported to EPA and the State of Utah at each periodic performance review conference conducted every six months.

(4) Due to the dynamic and ever changing nature of the air bag industry, it will be pertinent to allow for new development and provide flexibility for future materials. Emission product limitations will comply with air bag industry emissions standards listed in the Superior Environmental Performance section.

(5) The Utah Division of Air Quality under authority delegated by EPA has agreed that a separate Approval Order will be issued for the pyrotechnic waste disposal process which will serve as an amendment to the existing Approval Order which covers the current operation of processing airbag inflators and their components. No regulatory flexibility or modification of federal regulations is required for the new approval order to be issued by the Division of Air Quality.

(6) No off-site pyrotechnic wastes will be received or processed at this location and in the MRF.

(7) An MRF Operating Record, including waste feed composition, feed rates, temperatures, pressures, upset conditions, spills and releases, etc., will be maintained at the facility and made available for the State of Utah and EPA to review and copy for enforcement purposes if necessary.

(8) The State of Utah and EPA will be notified of any upset conditions, such as, spills and releases of hazardous or toxic substances at the MRF. The information will be reported orally within 24 hours from the time Autoliv becomes aware of the circumstances. A written submission to the State of Utah and EPA will be provided within five days of the time Autoliv becomes aware of the circumstances of the noncompliance. The severity and type of upset condition that would trigger the reporting threshold is described in the site-specific rule.

IV. Additional Information

A. How To Request a Public Hearing

A public hearing will be held, if requested, to provide opportunity for interested persons to make oral presentations regarding this regulation in accordance with 40 CFR Part 25. Persons wishing to make an oral presentation on the site specific rule to implement the Autoliv XL project should contact Ms. Mary Byrne of the EPA Region 8 office, at the address given in the **ADDRESSES** section of this document. Any member of the public may file a written statement before the hearing, or after the hearing, to be

received by EPA no later than February 27, 2001. Written statements should be sent to EPA at the addresses given in the **ADDRESSES** section of this document. If a public hearing is held, a verbatim transcript of the hearing, and written statements provided at the hearing will be available for inspection and copying during normal business hours at the EPA addresses for docket inspection given in the **ADDRESSES** section of this preamble.

B. How Does This Rule Comply with Executive Order 12866?

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in 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 entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this final rule will be significantly less than $100 million and will not meet any of the other criteria specified in the Executive Order, it has been determined that this rule is not a significant regulatory action under the terms of Executive Order 12866, and is therefore not subject to OMB review.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of today's rulemaking and the considerable public involvement in the development of the proposed Final Project Agreement, the EPA considers 21 days to be sufficient in providing a meaningful public comment period for today's action.

C. Is a Regulatory Flexibility Analysis Required?

The Regulatory Flexibility Act (RFA), 5 U.S.C. section 601 et seq., 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 rule will not have a significant impact on a substantial number of small entities because it only affects Autoliv. Therefore, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities.

D. Is an Information Collection Request Required for this Project Under the Paperwork Reduction Act?

This action applies only to Autoliv, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

E. Does This Project Trigger the Requirements of the 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 their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation 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.

As noted above, this rule is applicable only to the Autoliv facility in Promontory, Utah. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. RCRA & Hazardous and Solid Waste Amendments of 1984

1. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program for hazardous waste within the state. (See 40 CFR Part 271 for the standards and requirements for authorization.) States with final authorization administer their own hazardous waste programs in lieu of the federal program. Following authorization, EPA retains enforcement authority under sections 3008, 3013 and 7003 of RCRA.

After authorization, federal rules written under RCRA (non-HSWA), no longer apply in the authorized state except for those issued pursuant to the Hazardous and Solid Waste Act Amendments of 1984 (HSWA). New federal requirements imposed by those rules do not take effect in an authorized state until the state adopts the requirements as state law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time they take effect in nonauthorized states. EPA is directed to carry out HSWA requirements and prohibitions in

authorized states until the state is granted authorization to do so.

2. Effect on Utah Authorization

This proposed rule is being promulgated pursuant to non-HSWA authority, rather than HSWA. Utah has received authority to administer most of the RCRA program; thus, authorized provisions of each state's hazardous waste program are administered in lieu of the federal program. Utah has received authority to administer hazardous waste standards for generators. As a result, this proposed rule, would not be effective in Utah until the state adopts equivalent legal mechanisms or requirements as state law. EPA may not enforce these requirements until it approves the state requirements as a revision to the authorized state program.

G. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?

The 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 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.

H. Does This Rule Comply With 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. 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 proposed rule does not create a mandate on state, local or tribal governments. This 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.

I. How Does This Rule Comply With 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. 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. There are no communities of Indian tribal governments located in the vicinity of Autoliv. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Does This Rule Comply With the 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 standard. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Waste determination.

Dated: January 19, 2001.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 261 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by adding paragraph (b)(18) to read as follows:

§ 261.4 Exclusions.

* * * * *

(b) * * *

(18) By-products resulting from the production of automobile air bag gas generants at the Autoliv ASP Inc. facility in Promontory Utah, (Autoliv) are exempt from the D003 listing, for a period of five years from [the effective date of this rule/publication date] provided that:

(i) The by-product gas generants are processed on-site in Autoliv's Metal Recovery Furnace (MRF).

(A) By-product gas generants must only be fed to the MRF when it is operating in conformance with the State of Utah, Division of Air Quality's Approval Order DAQE–549–97.

(B) Combustion gas temperature must be maintained below 400 degrees Fahrenheit at the baghouse inlet.

(ii) Prior to processing in the MRF, the by-product gas generants are managed

in accordance with the requirements specified in 40 CFR 262.34.

(iii) The Autoliv facility and the MRF are operated and managed in accordance with the requirements of 40 CFR Part 265, Subparts B, C, D, E, G, H, I, and O.

(iv) Residues derived from the processing of by-product gas generants in the MRF are managed in accordance with the requirements specified in 40 CFR Parts 262 and 268.

(v) The following testing of the MRF's stack gas emissions is conducted:

(A) An initial test shall be conducted within 30 operating days of starting feed of by-product gas generants to the MRF. EPA may extend this deadline, at the request of Autoliv, when good cause is shown. The initial test shall consist of three duplicate runs sampling for:

(1) Particulate matter using Method 5 as specified in 40 CFR Part 60, Appendix A.

(2) The metals Aluminum, Arsenic, Barium, Beryllium, Boron, Cadmium, Chromium, Cobalt, Copper, Lead, and Nickel using Method 29 as specified in 40 CFR Part 60, Appendix A

(3) Polychlorinated di-benzo dioxins and furans using Method 23 0023A as specified in 40 CFR Part 60, Appendix A.

(4) Carbon monoxide using Method 10 as specified in 40 CFR Part 60, Appendix A.

(B) After the initial test is completed, an annual stack test (12 months from the previous initial stack test) of the MRF shall be conducted. The annual tests shall consist of three duplicate runs using Method 29 and Method 5 as specified in 40 CFR Part 60, Appendix A.

(C) Testing shall be conducted while by-product gas generants are fed to the MRF at no less than 90% of the planned maximum feed rate, and with the MRF operating parameters within normal ranges.

(D) Initial stack testing results and additional project performance data and information, including the quantity of by-product gas generants processed and the operating parameter values during the test runs, will be submitted by Autoliv to the State of Utah and EPA within 60 days of the completion of the initial stack test.

(E) Annual stack test results and additional project performance data and information, including the quantity of by-product gas generants processed and the operating parameter values during the test runs, will be submitted by Autoliv to EPA and the State of Utah within 60 days of the completion of the annual test.

(vi) Combustion gas discharged to the atmosphere from the MRF meets the following limits:

(A) Dioxin emissions do not exceed 0.4 ng per dry standard cubic meter on a toxicity equivalent quotient (TEQ) basis corrected to 7% Oxygen.

(B) Combined lead and cadmium emissions do not exceed 240 ug per dry standard cubic meter corrected to 7% Oxygen.

(C) Combined arsenic, beryllium, and chromium emissions do not exceed 97 ug per dry standard cubic meter corrected to 7% Oxygen.

(D) Particulate matter emissions do not exceed 34 mg per dry standard cubic meter corrected to 7% Oxygen.

(E) If the limits specified in paragraphs (b)(18)(vi)(A) through (D) of this section are exceeded, Autoliv shall discontinue feeding gas generants to the MRF until such time as Autoliv can demonstrate to EPA and the state of Utah satisfaction that the MRF combustion gas emissions can meet the limits specified in paragraphs (b)(18)(vi)(A) through (D) of this section

(vii) No by-product gas generants or other pyrotechnic wastes generated off-site will be received at the Autoliv facility in Promontory, Utah or processed in the MRF unless otherwise allowed by law (permit or regulation).

(viii) Autoliv will provide EPA and the state of Utah with semi-annual reports (by January 30 and July 30 of each year).

(A) The semi-annual reports will document the amounts of by-product gas generants processed during the reporting period.

(B) The semi-annual reports will provide a summary of the MRF Operating Record during the reporting period, including information on by-product gas generant composition, average feed rates, upset conditions, and spills or releases.

(ix) No significant changes are made to the operating parameter production values of Autoliv's production of air bag gas generants such that any of the constituents listed in appendix VIII of this part are introduced into the process.

(x) Autoliv reports to the EPA any noncompliance which may endanger health or the environment orally within 24 hours from the time Autoliv becomes aware of the circumstances, including:

(A) Any information of a release, discharge, fire, or explosion from the MRF, which could threaten the environment or human health.

(B) The description of the occurrence and its cause shall include:

(1) Name, address, and telephone number of the facility;

(2) Date, time, and type of incident;

(3) Name and quantity of material(s) involved;

(4) The extent of injuries, if any;

(5) An assessment of actual or potential hazards to the environment and human health, and

(6) Estimated quantity and disposition of recovered material that resulted from the incident.

(C) A written notice shall also be provided within five days of the time Autoliv becomes aware of the circumstances. The written notice shall contain a description of the non-compliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The EPA may waive the five day written notice requirement in favor of a written report within fifteen days.

(xi) Notifications and submissions made under paragraph (b)(18) of this section shall be sent to the Regional Assistant Administrator for the Office of Partnerships and Regulatory Assistance, U.S. EPA, Region 8 and the Executive Secretary of the Utah Solid and Hazardous Waste Control Board.

* * * * *

[FR Doc. 01–3616 Filed 2–12–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3000, 3100, 3200, 3400, 3500, 3600, and 3800

[WO–610–4111–02–24–IA]

RIN 1004–AC64

Oil and Gas Leasing; Geothermal Resources Leasing; Coal Management; Management of Solid Minerals Other Than Coal; Mineral Materials Disposal; and Mining Claims Under the General Mining Laws

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: The Bureau of Land Management (BLM) is extending the public comment period on a Notice of Proposed Rule, published in the **Federal Register** on December 15, 2000 (65 FR 78440). The proposed rule would amend Bureau of Land Management (BLM) mineral resources regulations to increase fees and to impose new fees to

cover BLM's costs of processing certain documents relating to its minerals programs. The primary purpose of this rule is to charge those who benefit from these minerals programs, rather than the general public, the costs of BLM minerals documents processing. In response to public requests for additional time, BLM extends the comment period 60 days from the original comment period closing date of February 13, 2001, to the extended comment period's closing date of April 16, 2001.

DATES: Send your comments to BLM on or before April 16, 2001 to assure BLM will consider them in preparing the final rule.

ADDRESSES: Send your comments to the Bureau of Land Management Administrative Record, Room 401 LS, 1849 C Street, NW., Washington, DC 20240, or hand deliver comments to the Bureau of Land Management Administrative Record, Room 401, 1620 L Street, NW., Washington DC. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under ''Electronic access and filing address.''

FOR FURTHER INFORMATION CONTACT: For questions about fluid minerals (oil, gas, geothermal resources) call Kermit Witherbee at (202) 452–0335. For questions about solid minerals, including coal, Durga Rimal at (202) 452–0372. If you require a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 4:00 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing Address

You can view an electronic version of this proposed rule at BLM's Internet home page: www.blm.gov. You can also comment via the Internet at: WOComment@wo.blm.gov. Please include ''Attention: AC64'' and your name and return address in your Internet message. If you do not receive a confirmation from our system that we have received your Internet message, contact us directly at (202) 452–5030.

Written Comments

Written comments on the proposed rule should:

A. Be specific;

B. Be confined to issues pertinent to the proposed rule;

C. Explain the reason for any recommended change; and

D. Reference the specific section or paragraph of the proposal you are addressing.

The BLM may not necessarily consider or include in the Administrative Record for the final rule comments which BLM receives after the close of the comment period (See **DATES**) or comments delivered to an address other than those listed above (See **ADDRESSES**).

You can review comments, including names, street addresses, and other contact information of respondents at this address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except Federal holidays. If you are an individual respondent you may request confidentiality. If you request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Dated: February 6, 2001.

Piet deWilt,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 01–3739 Filed 2–12–01; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–39; FCC 01–24]

Broadcast Services; Radio Stations, Television Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission explores the issues and concerns raised by parties regarding DTV reception capability, and we propose to require that certain types of new television sets have the capability to demodulate and decode over-the-air DTV signals by a date certain. We also seek comment on how best to implement such a requirement, including alternatives for phasing-in DTV reception capability in a manner that would minimize costs for both manufacturers and consumers. Finally, we propose to adopt labeling requirements with respect to television receivers that are not capable of receiving over-the-air broadcast television signals but, instead, are intended for use only with cable television reception.

DATES: Comments are due by April 6, 2001; reply comments are due by May 7, 2001.

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

FOR FURTHER INFORMATION CONTACT: Roger Holberg, or Mania Baghdadi, Mass Media Bureau, Policy and Rules Division, (202) 418–2120 or Alan Stillwell or Bruce Franca, Office of Engineering and Technology, (202) 418–2470.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Further Notice of Proposed Rule Making (''FNPRM'')* in MM Docket No. 00–39, FCC 01–24, adopted January 18, 2001, and released January 19, 2001. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC. and may also be purchased from the Commission's copy contractor, International Transcription Service (202) 857–3800, 445 12th Street, SW., Room CY–B402, Washington, DC. The *FNPRM* is also available on the Internet at the Commission's website: *http://www.fcc.gov*.

Synopsis of Further Notice of Proposed Rule Making

I. Background

1. In the Commission's digital television proceeding (MM Docket No. 87–268) we repeatedly indicated our intent to hold periodic reviews of the progress of the conversion to digital television and to make such mid-course corrections as were necessary to ensure the success of that conversion. In the *Fifth Report and Order,* 62 FR 26966, May 16, 1997 (''5R&O''), we stated that we would conduct such a review every two years. We commenced this, the first, periodic review, with a *Notice of Proposed Rule Making (''NPRM'')*, adopted March 6, 2000 (65 FR 15600, March 23, 2000). In that *NPRM* we stated that the conversion is progressing and that television stations are working hard to convert to digital television. We invited comment on several issues that we considered essential to be resolved in order to ensure that progress

continued and that potential sources of delay were eliminated. In a *Report and Order (''R&O'')*, also adopted January 18, 2001, in this proceeding we resolved a number of issues raised in the initial *NPRM*. We also adopted this *FNPRM* in order to solicit comment on the issues of whether and, if so, how to implement a DTV receiver requirement, whether to require labels on all DTV receivers designed for use only with a signal source other than broadcast (*e.g.,* cable, DBS, *etc.*), and whether to update our current DTV standard to reflect amendments to the ATSC DTV Standard that have been made since we substantially incorporated that standard into our rules.

II. Discussion

2. In response to the *NPRM* in this proceeding, a number of parties have argued that the Commission should require digital reception capability in all receivers, aside from particular performance thresholds. Their comments also implicated the accurate identification and marketing of receivers with various capabilities. In addition, consumer advocates have complained that any requirement that all receivers contain digital reception capability places an undue burden on consumers, and particularly low-income consumers. These comments have raised pertinent questions on which we will seek further information and comment to develop a full record on the current pertinence of such recommendations.

3. *DTV Receiver Standards—DTV Demodulation Requirement.* The NAB and the NABA submit that the Commission should adopt rules requiring every new television receiver sold to include the capability to receive DTV signals. The NAB states that this requirement is needed because market forces are not working to effect DTV receiver penetration except at an extremely slow pace. It observes that current DTV receivers are not in the marketplace in great numbers and existing sales volume of DTV receivers will not support the timely conversion and recovery of spectrum envisioned by the Commission and Congress. The NAB and the NABA argue a requirement that new TV receivers be capable of tuning DTV channels is therefore needed to push the transition along quickly. They specifically propose that the Commission require all new television receivers thirteen inches and greater in diagonal screen size to be capable of receiving all frequencies allocated by the Commission to television broadcasting, including all NTSC and all DTV channels. Although the NAB and NABA conclude the increased burden on consumers is temporary and thus acceptable, other commenters have concluded otherwise. The Consumer Federation of America (CFA) argued that a tuner requirement would place a burden on consumers, especially low-income consumers who ''may potentially be priced out of the market. * * *'' CFA also stated that ''[w]ithout more programming it is clear that there will not be a timely and complete transition to digital television. * * *''

4. The NAB argues that the Commission has authority for such action under the All Channel Receiver Act (ACRA), and that there is precedent in the all channel television receiver rules. It observes that the *Senate Report* accompanying that legislation noted three points in favor of promoting UHF receivers that are equally applicable to DTV: (1) That this is a unique situation; (2) while there will be an increased cost, it is expected that this will be substantially reduced once the benefits of mass production are fully realized; and (3) in any event, the relatively slight increase in cost will be a small price to pay for the unlocking of the * * * valuable UHF channels. The NAB submits that there are obvious parallels to DTV. It states that the DTV process is a unique transition of the entire television system to digital technology. The NAB and NABA state that while the price the public will pay to purchase an all channel receiver will initially be higher, the costs of such receivers will fall substantially as production increases. And finally, they state that the higher costs will be a small price to pay for ''unlocking'' the valuable DTV channels and, in addition, unlocking the valuable NTSC channels to be returned for public benefit and use.

5. In addition, in their reply comments CEA and Thomson argue that the ACRA does not provide the Commission authority to require DTV tuners in every set. They argue that in passing the ACRA, Congress only intended to ensure the viability of UHF broadcasting and that it did not foresee or intend to accommodate new modes of broadcasting, particularly digital broadcasting. CEA further argues that Congress explicitly considered but rejected empowering the Commission generally to set receiver standards. Thomson argues that in the DTV proceeding, the Commission itself acknowledged the ACRA's narrow scope in this area when it found that the Act does not mandate the manufacture of so-called dual-mode receivers, *i.e.,* receivers capable of receiving both analog and DTV signals.

6. As NAB, NABA and other commenters observe, DTV receivers are not yet available in the market in large quantities, and certainly not in sufficient volume to support a rapid transition to an all-digital broadcast television service. We request comment on whether a requirement to include DTV reception capability in certain new television sets could help to develop the production volumes needed to bring DTV prices down to where they are more attractive to consumers and thereby promote the more rapid development of high DTV set penetration. In particular, we seek comment on whether we should require that certain types of TV sets have the capability to demodulate and decode over-the-air DTV signals. Under such a requirement, TV sets would have to provide useable picture and sound commensurate with their video display and audio capabilities when receiving any of the recognized ATSC video formats. Such a requirement would not necessitate full HDTV capability in TV sets. For example, a TV set that had only NTSC level display capabilities would only have to be able to demodulate and decode DTV signals and present them at a standard definition display level equivalent to its NTSC capabilities. This capability would reduce reliance on analog television transmissions. We are, however, concerned about the potential impact of such a requirement on consumers, especially low-income consumers. We therefore seek comment on the initial projected costs of such a requirement as well as realistic estimates of those costs over time. We also seek comment on consumer television receiver purchasing patterns, especially those of low-income consumers.

7. We request comment on how best to implement DTV reception capability requirements, if we were to adopt them. We recognize that consumer electronics manufacturers would need time to implement such a requirement. The cost of DTV receiver components is still relatively high and it would not be economically feasible at this point to include DTV capability in smaller screen receivers, *i.e.,* 20 inches or less. In this regard, we understand the cost considerations associated with including DTV reception capability in TV sets now, and do not wish to impose undue costs on consumers or disrupt TV set pricing structure or the availability of TV receivers to consumers. One approach to minimize the impact of such a requirement would be to phase it in over time to take advantage of declining costs associated with electronics manufacturing volumes and apply the requirement initially only to

receivers with large screen sizes, *e.g.,* 32 inches and above. Such receivers are typically higher priced units where the cost of DTV components would be a smaller percentage of the cost of a receiver. Each manufacturer would be required to include DTV capability in an increasing percentage of the large screen units it markets each year. For example, in the first year of the requirements, 20 percent or some other percentage of each manufacturer's large screen models would be required to have DTV receive capability and this percentage would increase on some schedule in subsequent years. Separate set-top DTV receiver could be included in meeting the reception capability requirements. As the costs of components decrease, the requirement for DTV reception capability could be applied to more units each year by reducing the threshold screen size and by increasing the portion of units that would have to comply. We seek comment on what would be an appropriate minimum screen size for an initial requirement and the schedule for extending such requirements to other receivers. We also request comment on the cost implications of DTV reception capability requirements for both consumers and manufacturers.

8. We further request comment on whether any DTV reception capability requirements we might adopt should be based on percentages of the models marketed by each manufacturer, rather than units of production. In addition, we invite interested parties to submit other plans that would result in new TV receivers being equipped with DTV capability that would result in widespread penetration of TV receivers in households to enable the transition from analog to digital TV service consistent with the intent of Congress in 47 U.S.C. 309(j)(14), and a discussion of the likely effectiveness of such alternative plans.

9. With regard to our authority to establish requirements for DTV receiver capabilities, we observe that 47 U.S.C. 303(s), as noted above, provides the Commission with authority to require that television receivers be capable of adequately receiving all frequencies allocated by the Commission to television broadcasting. While Congress in 1962 did not anticipate the advent of digital television service, a plain language reading of this section does not limit our authority to analog television receivers, nor does it limit our authority to channels in the UHF band. Inasmuch as the frequencies allocated to television broadcasting now include those channels allotted for DTV service, 47 U.S.C. 303(s) provides the Commission with authority to require that television receivers be capable of adequately receiving those channels. Moreover, the ACRA's legislative history suggests that Congress' reasoning in enacting the statute supports such a conclusion. We seek comment on how to construct any DTV tuner requirement consistent with any relevant statutory authority, including 47 U.S.C. 303(s) and any other relevant sections of the Communications Act.

10. *Receiver Labeling.* Turning to another issue concerning digital television receivers, we observe that television receivers could be marketed that do not have the capability to receive over-the-air broadcast signals. For example, receivers intended only for use in receiving cable or direct broadcast satellite service might not include the capability to tune over-the-air broadcast television signals. While we are not aware of any such receivers that are being marketed at this time, such devices would be permissible under our rules. In this regard, the all-channel reception provisions of 47 CFR 15.117(b) would not apply to receivers that did not have any capability for receiving broadcast signals. We expect that consumers will continue to expect that all digital television receivers will be able to receive over-the-air digital broadcast signals and that manufacturers therefore will continue to equip all television receivers with this capability. If, however, manufacturers do at some point chose to produce receivers that can be used with digital cable systems but cannot receive digital broadcast signals, we believe that consumers should be so notified prior to purchase. We therefore intend to explore this question and possible Commission responses. We seek comment on whether any manufacturers are producing or plan to produce digital television receivers that can receive digital cable transmissions but are incapable of receiving digital broadcast signals off-the-air. We also seek comment on whether the Commission should require any digital television receivers that cannot receive off-the-air digital broadcast signals to carry a label informing consumers of this limitation on the receivers' functionality. Parties supporting such a labeling requirement may wish to propose labels keeping in mind our goals of ease of understanding for consumers and low cost and ease of compliance for manufacturers.

11. *Update of the DTV Standard.* As indicated above, there has been an update to the ATSC DTV Standard since 1996, when we adopted it. When we incorporated most of the ATSC DTV Standard into our rules by reference, we made reference to the version of that Standard which was the most recent iteration of the Standard at that time. Specifically, we incorporated by reference ''ATSC Digital Television Standard, 16 Sep 95.'' However, as commenters noted, this standard has been updated since we incorporated it into our rules. Accordingly, we seek comment on whether we should revise our rules to include reference the March 16, 2000, amendment to the standard. Commenters favoring revision should specify whether we should refrain from incorporating any parts of this update, as we did with regard to the eighteen video format constraints in the original ATSC DTV Standard. Additionally, we specifically do not plan on considering in regard to updating the standard comments urging us to amend the standard with regard to its 8 VSB modulation component, or to fundamentally change the standard in any other way such as, for example, by prohibiting its use of interlaced scanning, changing the audio component of the standard, or altering its frame aspect ratios.

III. Conclusion

12. At the outset of this proceeding we stated that the conversion to digital is progressing and television stations are working hard to convert to DTV. The comments we received in response to the *NPRM* have mostly further confirmed our initial impressions. We believe that the conversion is, indeed, making progress and that the actions we are taking, and proposing, herein will hasten this transition. Particularly, our choice of an early channel election for commercial licensees and our decision not to require replication of NTSC service should well conduce to allowing stations to make plans and purchase equipment at the earliest practicable times. We believe that specific receiver performance standards are neither necessary nor useful at this time but we are inclined that a mandatory phase-in of a DTV reception capability in receivers will best ensure the rapid progress of the transition at a reasonable cost to consumers. We will continue to monitor the progress toward the DTV conversion and will in future reviews take those actions needed to accomplish a smooth transition by December 31, 2006.

IV. Administrative Matters

13. *Comments and Reply Comments.* Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before April 6, 2001, and reply comments on or before May 7, 2001. Comments may be filed using the

Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121 (1998).

14. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment via e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply.

15. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW–A325, Washington, DC 20554.

16. Parties who choose to file paper should also submit their comments on diskette. These diskettes should be addressed to: Wanda Hardy, Paralegal Specialist, Mass Media Bureau, Policy and Rules Division, Federal Communications Commission, 445 Twelfth Street, SW., 2–C221, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 00–39), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must sent diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, SW., CY–B402, Washington, DC 20554.

17. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, SW., CY–A257, Washington, DC 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov*. Comments and reply comments also will be available electronically at the Commission's Disabilities Issues Task Force web site: *www.fcc.gov/dtf*. Comments and reply comments are available electronically in ASCII text, Word 97, and Adobe Acrobat.

18. This document is available in alternative formats (computer diskette, large print, audio cassette, and Braille). Persons who need documents in such formats may contact Martha Contee at (202) 4810–0260, TTY (202) 418–2555, or *mcontee@fcc.gov*.

19. *Ex Parte Rules.* This proceeding will be treated as a ''permit-but-disclose'' proceeding, subject to the ''permit-but-disclose'' requirements under 47 CFR 1.1206(b), as revised. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description or the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in section 47 CFR 1.1206(b).

20. *Initial Regulatory Flexibility Analysis.* With respect to this *FNPRM*, an Initial Regulatory Flexibility Analysis (IRFA) is contained. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an IRFA of the possible economic impact on small entities of the proposals contained in this *FNPRM*. Written public comments are requested on the IRFA. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *FNPRM*, and must have a distinct heading designating them as a response to the IRFA.

21. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* provided above. The Commission will send a copy of the *FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a). In addition, the *FNPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**.

22. *Need for, and Objectives of, the Proposed Rules.* Beginning in 1987, the Commission undertook to bring the most up-to-date technology to broadcast television. That resulted in several Commission decisions including those adopting a digital television (DTV) standard, DTV service rules, and a Table of DTV Allotments. The Table of DTV Allotments provides each existing television broadcaster with a second channel on which to operate a DTV station for the transition period after which one of its channels will revert to the government for use in other services. The transition deadline established by Congress is December 31, 2006. The Commission is permitted to extend that deadline on a market-by-market basis if more than 15 percent of viewers will be left without service from (1) a digital television receiver; (2) an analog television receiver equipped with a digital/analog converter; or (3) a multi-channel video provider that carries local broadcast stations. The Commission is issuing this *FNPRM* to explore whether a requirement to include DTV reception capability in new television sets would help develop the production volumes needed to bring DTV receiver prices down quickly to where they are more attractive to consumers and thereby promote the more rapid development of high DTV set penetration, enabling compliance with the statutory transition deadline.

23. *Legal Basis.* This *FNPRM* is adopted pursuant to sections 1, 2(a), 4(i), 7, and 303 of the Communications Act, 47 U.S.C. 151, 152(a), 154(i), 157, and 303.

24. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply.* The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently

owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

25. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the [SBA] and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 1992, there were approximately 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000.'' As of 1992, there were approximately 85,006 local governments in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

26. Rules adopted in this proceeding could apply to manufacturers of DTV receiving equipment and, particularly, television receivers. The SBA has developed a definition of small entity for manufacturers of household audio and video equipment (SIC 3651). This includes all such companies employing 750 or fewer employees. The Commission has not developed a definition of small entities applicable to manufacturers of electronic equipment used by consumers, as compared to industrial use by television licensees and related businesses. Therefore, we will utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities. The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment, and particularly television receivers, for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use but, in any even, no more than 410 are small entities.

27. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* At this time, we do not expect that the proposed rules would impose any additional recordkeeping or recordkeeping requirements. However, compliance may require the manufacture of some types of DTV capable receivers. While this would have an impact on manufacturers of television receivers, it will be similarly costly for both large and small manufacturers and, in any event, the cost will ultimately be borne by the consumer. We seek comment on whether others perceive a need for extensive recordkeeping.

28. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

29. The *FNPRM* recognizes that if the Commission were to require DTV reception capability in new television receivers that action would pose new burdens on consumer electronics manufacturers, especially in the initial period when production volumes are relatively low. The *FNPRM* further observes that the cost considerations associated with DTV reception capability are such that it could not be economically feasible at this point in time to include DTV capability in smaller screen receivers, *i.e.,* 20 inches or less. We believe that as production increases, the price and size of the components needed for DTV reception will decline substantially, so that the incremental cost of including that capability in TV receivers will eventually become low. In addition, as the goal of this effort is to convert broadcast television service to digital operation, all television receivers will have to be able to receive DTV service at the end of the transition.

30. In order to minimize the impact of a DTV reception capability requirement on manufacturers, if the Commission were to conclude that one were needed, the *FNPRM* suggests a plan by which the requirement would first apply to receivers with large screen sizes, *i.e.,* 32 inches or larger. Larger screen receivers generally are more expensive units, so that the additional cost of manufacturing them with DTV capability would be a much lower percentage of the total cost than it would for smaller screen units. As discussed, the requirement would apply to only a small portion of larger screen receivers at first; over time the percentage of units that would have to have DTV reception capability would increase and the requirement would also be extended to smaller screen units in the same incremental manner. To minimize the impact on manufacturers, receivers would only be required to have the capability to receive and decode over-the-air DTV signals. Thus, TV sets subject to the requirement would only have to provide useable picture and sound commensurate with their video and sound capabilities when receiving any of the recognized ATSC video formats. The requirement as proposed would not mandate full HDTV capability in TV sets. We also requested comment on whether we should base a requirement on percentages of the models marketed by each manufacturer, rather than units of production. This should benefit small entities by allowing them to provide DTV capability in their larger receivers, with a higher profit margin, rather than requiring them to provide such capability across their product line including sets where the market is more price conscious and price sensitive.

31. The *FNPRM* also solicits comment on a proposal to require receiver manufacturers to label as such television sets that are not capable of receiving over-the-air DTV broadcasts but which, instead are intended for digital use only in conjunction with cable television and/or broadcast satellite reception. This proposed requirement is intended to provide the consuming public with easily understandable information concerning

the capabilities of the receivers being purchased.

32. The principal alternatives for minimizing the impact of the transition on manufacturers include plans that would relax the schedule for the percentages of units required to comply. The *FNPRM* requests comments on this proposal and also invites interested parties to submit alternatives. The labeling proposal will be made as simple and inexpensive to comply with as possible to minimize the impact on small entity producers. Comments on how it may be made even simpler are solicited.

33. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules. None.

34. *Initial Paperwork Reduction Act Analysis.* This *FNPRM* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public to take this opportunity to comment on the information collections contained in this *FNPRM,* as required by the Paperwork Reduction Act of 1996. Public and agency comments are due at the same time as other comments on the *FNPRM.* Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) ways to enhance the quality, utility, and clarity of the information collected; and (c) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, 445 Twelfth Street, SW., Room C–1804, Washington, DC 20554, or via the Internet to *jboley@fcc.gov* and to Edward C. Springer, OMB Desk Officer, 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Edward.Springer@omb.eop.gov.*

II. Ordering Clauses

35. Pursuant to the authority contained 47 U.S.C. 151, 152(a), 154(i), 157 and 303, this *FNPRM* is adopted.

36. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *FNPRM,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Branch.

[FR Doc. 01–3638 Filed 2–12–01; 8:45 am]

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Notices

Federal Register

Vol. 66, No. 30

Tuesday, February 13, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Bitterroot Fires 2000: Post-Fire Recovery Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Bitterroot National Forest experienced a fire season of historic proportions in 2000. Wildfires burned 307,000 acres on the Bitterroot National Forest and 49,000 acres on private and State lands in Ravalli County, Montana during the summer of 2000. The fires destroyed 70 homes, 2 commercial properties, and 167 outbuildings. Much of the burn occurred in the low elevation warm, dry ponderosa pine/Douglas-fir forest type which occurs along much of the wildland urban interface. Due to high fuel loads prior to the fires, these warm, dry forest types burned at severities well outside their historic range. As a result of the fires, fuel loads are expected to increase dramatically over the next several decades as thousands of fire-killed trees fall over and accumulate on the forest floor. Much of this fuel build-up will occur in the wildland urban interface, setting the stage for future fires that could threaten life, homes, improvements, and property. The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to reduce fuels, improve watershed and aquatic conditions, revegetate burned landscapes, and improve forest health on the Montana portion of the Bitterroot National Forest. The Record of Decision will disclose how the forest Service plans to treat fuels on an estimated 60,000 burned acres (about 20% of the burned acres on the Montana portion of the forest, excluding wilderness) using a variety of methods, including commercial timber sales, non-commercial thinning, piling, and burning, prescribed fire, and stewardship contracts. The priority areas for fuel reduction work would be the burned portion of the wildland urban interface, in warm dry forest communities, and selected areas where reforestation is proposed. The Record of Decision will also disclose how watershed and aquatic health will be improved by implementing drainage improvement measures on approximately 400 roads in the burned area. Treatments would include reconstructing existing open roads to meet Best Management Practices (BMP) standards, and decompacting, recontouring, and restoring the natural drainage pattern on certain closed roads which are not needed for future public or management access. Fisheries would be improved in the burned drainages by removing man-made barriers that currently fragment native fish populations, and adding woody debris to streams which lacked woody material prior to the fires. Tree seedlings would be planted on approximately 24,000 acres where natural regeneration is not expected to meet desired species composition and tree stocking levels. The Bitterroot National Forest Land and Resource Management Plan (Forest Plan) has a Forest-wide standard that states ''All snags that do not present an unacceptable safety risk will be retained''. The Forest Plan is proposed to be amended specifically for this project to allow cutting snags that do not represent an unacceptable safety risk. This project may require additional site-specific amendments to the Bitterroot Forest Plan. A range of alternative responsive to significant issues will be developed, including a no-action alternative.

DATES: Comments concerning the scope of this project should be received by the Sula Ranger District, Bitterroot National Forest by March 15, 2001.

ADDRESSES: Please send written comments to: Sula Ranger District, Bitterroot National Forest; Attn: Post-Fire Recovery EIS; 7338 Highway 93 South; Sula, MT 59871.

FOR FURTHER INFORMATION CONTACT: Craig Bobzien, Darby/Sula District Ranger, telephone: (406) 821–3201, or Stuart Lovejoy, Post-Fire Recovery EIS Team Leader, Sula Ranger District, 7338 Highway 93 South, Sula, MT 59871, telephone (406) 821–3201, email: *slovejoy@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Public participation will be an integral component of the study process, and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments and assistance from federal, State, County, and local agencies, individuals and organizations that may be interested in or affected by the proposed activities. The scoping process will include: (1) Identification of potential issues, (2) identification of issues to be analyzed in depth, and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Written scoping comments will be solicited through a scoping package that will be sent to the project mailing list and local newspapers. For the Forest Service to best use the scoping input, comments should be received by March 15, 2001. Preliminary issues identified for analysis in the EIS include the potential effects and relationship of the project to fire hazard reduction, water quality, fisheries and reparian areas, wildlife habitat, soil productivity, recreation, motorized access, scenery, heritage resources, sensitive plants, and benefits/costs of the proposed activities.

Based on the results of scoping and the resource conditions within the project area, alternatives (including a no-action alternative) will be developed for the draft EIS. The draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in May 2001. The final EIS is anticipated in September 2001.

The comment period on the draft EIS will be 45 days from the date that the EPA publishes the notice of availability in the **Federal Register**.

At this early stage, the Forest Service believes it is important to give reviewers notice of several court ruling related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal, so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft EIS stage,

but that are not raised until the completion of the final EIS, may be waived or dismissed by the court. *City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period on the draft EIS, so that substantive comments and objections are made available to the Forest Service at a time when they can be meaningfully considered and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may address the adequacy of the draft EIS, or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR 1503.3, in addressing these points.

Permits/Authorizations: The proposed action will require one or more site-specific amendments to the Bitterroot Forest Plan. Rodd Richardson, Forest Supervisor, Bitterroot National Forest, is the responsible official for the Plan amendments.

Responsible Official: Rodd Richdardson, Forest Supervisor, Bitterroot National Forest, is the responsible official. In making the decision, the responsible official will consider the comments; responses; disclosure of environmental consequences; and applicable law, regulations, and policies. The responsible official will state the rationale for the chosen alternative in the Record of Decision.

Dated: February 2, 2001.

Rodd Richardson,

Forest Supervisor.

[FR Doc. 01–3592 Filed 2–12–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Bar T Bar and Anderson Springs Allotment Management Plan EIS Southwestern Region, Arizona, Coconino County, Coconino National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Coconino National Forest is planning to prepare an Environmental Impact Statement on a proposal to issue term grazing permits and develop allotment management plans for the next 10 years for the Bar T Bar and Anderson Springs Allotments, an area encompassing approximately 229,562 acres of National Forest System lands on the Blue Ridge and Mormon Lake Ranger Districts of the Coconino National Forest, Coconino County, Arizona. The purpose of the proposal is to analyze the effects of livestock grazing, coordinate livestock management with other resource needs, decrease canopy densities in pinyon-juniper and ponderosa pine vegetation types in historical grasslands, improve habitat conditions for pronghorn antelope, increase cool season plants, and to revise the allotment management plans (AMP's) for the Bar T Bar and Anderson Springs Allotments.

DATES: Comments in response to this Notice of Intent concerning the scope of the analysis should be received in writing on or before March 15, 2001.

ADDRESSES: Send written comments to USDA Forest Service, Coconino National Forest, Larry Sears, District Ranger, Mogollon Rim Center, HC 31, Box 212, Happy Jack, AZ 86024. Electronic mail may be sent to ehumphrey@fs.fed.us. See the **SUPPLEMENTARY INFORMATION** section for additional information about electronic mailing.

Responsible Official: Jim Golden, the Forest Supervisor of the Coconino National Forest, Supervisor's Office, 2323 E. Greenlaw Lane, Flagstaff AZ 86004, will decide what actions are most appropriate for Bar T Bar and Anderson Springs Allotment Management Plan EIS.

FOR FURTHER INFORMATION CONTACT: Beth Humphrey, Project Leader, (520) 477–2255.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to revise the allotment management plans on the Bar T Bar and Anderson Springs Allotments on the Blue Ridge and Mormon Lake Ranger Districts.

The environmental analysis process for these allotments was initiated on January 4, 1999. The Diablo Trust, an incorporated non-profit land management collaborative team in the Flagstaff, Arizona area, developed the proposed action. The proposed action was adopted by the Forest Service to be taken through the National Environmental Policy Act procedures. An Interdisciplinary Team of Forest Service resource specialists was selected based on proposed management practices, current uses, and anticipated concerns with management of these allotments.

The proposed action proposes to issue term grazing permits on the Bar T Bar and Anderson Springs Allotments. Permitted livestock numbers would be 18,050 Head Months on the Bar T Bar Allotment and 6,036 Head Month's on the Anderson Springs Allotment. This plan focuses on the use of plant recovery and timing of grazing and rest to achieve goals, rather than setting utilization limits. Planned livestock grazing would be used to meet management objectives and to provide for maximum flexibility to meet resource needs. Collaboration between the Forest Service, the Diablo Trust, the permittees, Arizona State Lands Department, Arizona Game and Fish Department, and Coconino County is emphasized in meeting desired conditions for the area. The livestock grazing strategy on the Bar T Bar Allotment would use a combination of rest rotation and deferred rotation grazing with a season of use from approximately May through October each year. The livestock grazing strategy on the Anderson Springs Allotment would be a combination of deferred rest-rotation and time-controlled grazing from approximately June through October each year.

Grassland restoration and maintenance treatments are proposed on 63,730 acres in pinyon-juniper woodland and ponderosa pine vegetation types using a variety of treatment methods. These treatments are proposed to restore and maintain native grasslands, increase plant cover and litter, improve soil conditions, provide for wildlife movements, and increase plant diversity, especially in cool season species. Approximately 61.6 miles of new fencing, 19.8 miles of fence removal, 3.74 miles of fence reconstruction, and 8.95 miles of fence replacement are proposed which would split large pastures, provide for improved livestock distribution, provide for increased pasture rest, and increase efficiency in livestock management. Five new stock ponds are proposed, as

well as reconstriction of two existing water developments. Existing fences would be upgraded to wildlife specifications. Approximately 19.0 miles of road maintenance and reconstruction is proposed.

During the public comment period on the Proposed Action, issues were raised that resulted in the development of additional alternatives to the Proposed Action. The alternatives differ in the type of grazing strategy used, utilization levels, permitted numbers of livestock, location and type of vegetation treatments, amount and type of structural improvements, and levels of monitoring proposed. The alternatives are briefly described below.

• *No Action (Continue Current Management)*—The current livestock grazing strategy and permitted numbers would continue for the next ten years. A new 10-year term grazing permit would be issued for both allotments and a new allotment management plan would be written. No new actions would be planned.

• *No Grazing*—No livestock grazing would be allowed for the next 10-year period. Term Grazing Permits would not be issued for either allotment. No new actions would be planned.

• *Proposed Action*—The actions proposed above would be implemented.

• *Rest Rotation Grazing Strategy with Least Fencing*—The current livestock grazing strategy on the Anderson Springs Allotment would be changed to a rest-rotation system. Permitted livestock numbers would be reduced on both allotments and maximum allowable utilization levels would be reduced. No new fencing would be constructed on the Anderson Springs Allotment, and new fencing proposed on the Bar T Bar Allotment would be reduced to half that of the proposed action. A riparian pasture would be constructed around Soldier Annex Lake. Five study plots would be constructed to provide information about pronghorn antelope habitat. No road maintenance is proposed. Vegetation treatments would be modified, with approximately 50,615 acres of grassland restoration and maintenance proposed. Water developments would remain the same as proposed in the Proposed Action.

• *Modified Proposed Action (Remapping)*—The proposed action would be implemented as described above, with the following exceptions. Mapping changes resulted in a reduction in the proposed vegetation treatments to approximately 50,615 acres. A riparian pasture would be constructed around Soldier Annex Lake. Five pronghorn antelope study plots would be constructed. The livestock grazing strategy would be the same as proposed in the Proposed Action, with the same permitted livestock numbers. A range of maximum utilization levels would be set for both allotments. Fences, water developments, and road and trail maintenance would be the same as in the Proposed Action.

Decision To Be Made

The Coconino National Forest Supervisor is the Deciding Official for this project. He will decide what actions are most appropriate for managing the Bar T Bar and Anderson Springs Allotments for the next 10 years. The Forest Supervisor may select any of the management alternatives presented, or may select a management alternative that is different or includes portions of these alternatives. If a livestock grazing alternative is selected, the Forest Supervisor's decision will include the maximum permitted number of livestock for these allotments, the grazing strategy to use, and the number and type of range structural and non-structural improvements. He will also approve the monitoring plan and authorize a 10-year Term Permit for livestock grazing on this allotment.

Preliminary Issues

Issues identified previous scoping efforts included effects of the proposed action on habitat for pronghorn antelope on Anderson Mesa, concern with livestock numbers on both allotments, the use of time-controlled grazing in some areas on the Anderson Springs Allotment, and the economics of implementing the Proposed Action.

Public Involvement, Rationale, and Public Meetings

In April 1999, a scoping letter summarizing the proposed action was sent out to a mailing list of approximately 700 interested individuals. This letter invited public comment for a period of 30 days. The Proposed Action was also made available through the Diablo Trust's website and copies of the proposed action and scoping letter were placed at several locations in the Flagstaff area, as well as at the Blue Ridge District Office and Happy Jack Visitor Center. Additional public comments were received after the initial comment period and have been accepted throughout the analysis period. An open house was held on April 21, 1999 to familiarize the public with the Proposed Action and to solicit public comments. comments received during this scoping period have already been incorporated into the analysis.

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft and final EIS.

Electronic Access and Filing Addresses

Comments may be sent by electronic mail (e-mail) to *ehumphrey@fs.fed.us.* Please reference the Bar T Bar and Anderson Springs Allotment Management Plan EIS on the subject line. Please include your name and physical mailing address with your comments so documents pertaining to this project may be mailed to you.

Estimated Dates for Filing

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 2001. At that time, EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by July 2001. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

The Reviewers Obligation To Comment

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (*E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections

are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the national Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 US 519, 553 (1978), Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* 9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp.1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: February 7, 2001.

Karyl Georgio,

Acting Forest Supervisor.

[FR Doc. 01–3591 Filed 2–12–01; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 67–2000]

Foreign-Trade Zone 115—Beaumont, TX; Application for Expansion; Amendment of Application—Sun Pipe Line Facility

Notice is hereby given that the application by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of Foreign-Trade Zone 115, requesting authority to expand its zone to include a petroleum terminal in Nederland (Jefferson County), Texas, (65 FR 77560, 12/12/00), has been amended to include nine petroleum product storage tanks within the tank farm area of the proposed expansion site. The nine tanks are currently part of Subzone 116B, Site 4 (Fina). This proposal would remove them from Subzone 116B and include them within Zone 115.

The application remains otherwise unchanged.

The comment period is reopened until February 21, 2001.

Dated: February 7, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–3639 Filed 2–12–01; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–2001]

Foreign-Trade Zone 122—Corpus Christi, TX Application for Subzone Status International Resistive Company Plant (Resistors), Corpus Christi, Texas

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting special-purpose subzone status for the electronic resistor manufacturing plant of International Resistive Company (IRC) (a subsidiary of TT Group PLC, of the United Kingdom), located in Corpus Christi, Texas. 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 February 6, 2001.

The IRC plant (8 acres/129,000 sq. ft./320 employees) is located 4222 South Staples Street, Corpus Christi, Texas. The facility is used to produce electronic resistors (HTSUS# 8533.29.0000, 8533.40.8000) for export and the domestic market. The production process involves design, assembly, testing, and warehousing. Components purchased from abroad (representing 50 to 65% of overall value) include: silicone adhesive, resistor leads, and copper conductors (duty rate range: 1–10%).

FTZ procedures would exempt IRC from Customs duty payments on the foreign components used in export production (1% of shipments). On its domestic sales, the company would be able to choose the duty rate that applies to finished resistors (duty free) for the foreign inputs noted above. No local inventory tax exemption is included as a proposed benefit. The application indicates that subzone status would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 16, 2001. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 30, 2001).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service-Corpus Christi, Room 305, 400 Mann Street, Corpus Christi, TX 78401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 4008, 14th Street & Constitution Avenue, NW, Washington, DC 20230–0002.

Dated: February 6, 2001.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 01–3640 Filed 2–12–01; 8:45 am]

BILLING CODE 3510–DS–P

FEDERAL TRADE COMMISSION

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Request for Comment and Notice of Public Workshop: Electronic Signatures in Global and National Commerce Act

AGENCIES: Federal Trade Commission, and the National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice requesting public comment and academic papers and announcing public workshop.

SUMMARY: Section 105(b) of the Electronic Signatures in Global and National Commerce Act (''ESIGN'' or ''the Act''), Public Law 106–229, 114 Stat. 464 (2000), requires the Federal Trade Commission (''FTC'' or ''the Commission'') and the Secretary of Commerce to study and report to Congress on the benefits and burdens of requiring consumer consent to receive information electronically pursuant to § 101(c)(1)(C)(ii). In connection with preparing this report, the FTC and the National Telecommunications and Information Administration (''NTIA'') seek public comment and academic papers and plan to hold a public workshop to inform this study.

DATES: Written comments and papers are requested to be submitted on or before March 16, 2001. The workshop will be held on April 3, 2001, from 8:30 a.m. until 5:00 p.m., at the Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

ADDRESSES: Six hard copies of each written comment or paper should be submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. An additional copy of written comments should be sent to: Sallianne Fortunato, National Telecommunications and Information Administration, Room 4716, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Alternatively, comments and papers may be submitted to the following email addresses: ''*esign-study@ftc.gov*'' and ''esign-study@ntia.doc.gov.'' The content of any comments or papers submitted by email should be organized in sequentially numbered paragraphs. All submissions should be captioned ''ESIGN Study-Comment P004102.''

To enable prompt review and accessibility to the public, written comments and papers also should be submitted to the FTC, if possible, in electronic form, on a 3½ inch computer disk, with a label stating the name of the person or entity submitting the comment and the name and version of the word processing program used to create the document. Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format. Individual members of the public filing comments need not submit multiple copies or comments in electronic form.

Written comments and papers will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, 16 CFR 4.9, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. at Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission will make this notice and, to the extent possible, all comments or papers received in electronic form in response to this notice available to the public through the Internet at the following addresses: *http://www.ftc.gov and http://www.ntia.doc.gov.*

FOR FURTHER INFORMATION: For questions about this request for comment and academic papers and notice of public workshop, contact: April Major, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–2972; Marianne Schwanke, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–3165; or Sallianne Fortunato, Telecom Policy Analyst, Office of Policy Analysis and Development, National Telecommunications and Information Administration (NTIA), Room 4716, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–1880.

SUPPLEMENTARY INFORMATION:

I. Background: Electronic Signatures in Global and National Commerce Act

On June 30, 2000, Congress enacted ESIGN to facilitate the use of electronic records and signatures in interstate or foreign commerce and to remove uncertainty about the validity of contracts entered into electronically. Under the Act, businesses that are required to provide or make available information to consumers in writing may provide consumers with that information using electronic records only if the consumer affirmatively consents in a manner that reasonably demonstrates the consumer's ability to access the electronic record. The Act requires the Secretary of Commerce and the Federal Trade Commission to study the burdens and benefits of this specific consent requirement on consumers and electronic commerce and submit a report to Congress by June 30, 2001.

II. Statutory Language Requiring a Report to Congress

The statutory language requiring the Secretary of Commerce and the Federal Trade Commission to submit a report to Congress regarding the benefits and burdens of requiring consumer consent to electronic transactions is found in § 105 (b) of ESIGN and is set forth below.

Sec. 105. Studies

* * * * *

(b) *Study of Electronic Consent.*—Within 12 months after the date of the enactment of this Act, the Secretary of Commerce and the Federal Trade Commission shall submit a report to the Congress evaluating any benefits provided to consumers by the procedure required by section 101(c)(1)(C)(ii); any burdens imposed on electronic commerce by that provision; whether the benefits outweigh the burdens; whether the absence of the procedure required by section 101(c)(1)(C)(ii) would increase the incidence of fraud directed against consumers; and suggesting any revisions to the provision deemed appropriate by the Secretary and the Commission. In conducting this evaluation, the Secretary and the Commission shall solicit comment from the general public, consumer representatives, and electronic commerce businesses.

The language of § 105(b) specifically limits its scope to § 101(c)(1)(C)(ii) which reads:

Sec. 101(c) Consumer Disclosures

(1) *Consent to Electronic Records.*—Notwithstanding subsection (a), if a statute, regulation, or other rule of law requires that information relating to a transaction or transactions in or affecting interstate or foreign commerce be provided or made available to a consumer in writing, the use of an electronic record to provide or make available (whichever is required) such information satisfies the requirement that such information be in writing if:

* * * * *

(C) the consumer—

* * * * *

(ii) consents electronically, or confirms his or her consent electronically, in a manner that reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent.

* * * * *

In summary, if a statute, regulation, or other rule of law requires information relating to a transaction to be provided or made available to a consumer in writing, § 101(c) allows this information to be provided or made available electronically only if certain consumer protection conditions are met. Section 101(c)(1)(C)(ii) is one such condition and provides that the consumer must consent electronically or confirm his or her consent electronically, in a manner that reasonably demonstrates the consumer's ability to access the information.

Under § 105(b), the Federal Trade Commission and the Secretary of Commerce are tasked with submitting to Congress a report that evaluates five aspects of § 101(c)(1)(C)(ii). First, we must assess the benefits to consumers of the procedures required by § 101(c)(1)(C)(ii). Second, we are to identify any burdens imposed by these procedures. Third, we must balance the benefits and burdens and discuss whether the benefits outweigh the burdens. Fourth, we are to consider whether the absence of the consent procedure would increase consumer fraud. Finally, we are to suggest improvements or changes to the statutory language that we deem appropriate.

III. Invitation To Comment

The FTC and NTIA request that interested parties, including industry members, electronic commerce businesses, consumer representatives, law enforcement, regulatory agencies, and academics, submit written comments on any issue of fact, law, or policy that may inform the study of the procedure required by § 101(c)(1)(C)(ii). We invite comment on ESIGN generally to inform our examination of the narrower issues associated with the consumer consent procedure found in § 101(c)(1)(C)(ii). Please provide copies of any studies, surveys, research, or other empirical data referenced in responses. The questions set forth below are intended only as examples of the issues relevant to our examination. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

General Issues

1. How does the requirement of section 101(c)(1)(C)(ii) of the ESIGN Act, that businesses allow consumers an opportunity to provide consumer consent or confirmation of consent electronically prior to providing consumers electronic versions of information, affect electronic commerce? How will electronic commerce be affected in the future by this requirement?

2. What statutory changes, if any, should be made to the ESIGN Act to assist businesses and consumers in domestic and/or international business markets in implementing and adapting to the consumer consent and consent confirmation provisions under section 101(c)(1)(C)(ii) of the Act?

3. What, if any, are the benefits and burdens to consumers and electronic commerce resulting from the affirmative consent provisions in the statute? Do any such benefits outweigh any burdens?

4. What, if any, improvements or changes should Congress make to the statutory language of section 101(c)(1)(C)(ii)?

5. Are there any additional issues that should be considered during this study?

Business Issues

6. If your business provides information electronically to consumers that is required by law to be in writing, do you request that consumers provide electronic consent or confirm their consent before the electronic information is transmitted?

7. Describe in detail the method used to obtain electronic consumer consent.

8. If you allow consumers to provide electronic consent to receive legally-required information electronically, please explain whether the electronic consent practice of your business is a result of section 101(c)(1)(C)(ii) of the ESIGN Act. Explain any other legal basis for this practice.

9. For what types of transactions do you seek electronic consumer consent or confirmation prior to sending information electronically that is required by law to be sent to consumers in writing?

10. Provide an estimate of the percentage of business transactions you conduct per month that requires the production of legally-required information to consumers in written form.

11. Does your business incur additional costs directly related to providing customers with the option of electronically consenting to or confirming the consent to receive information electronically, whether or not you provide the information pursuant to section 101(c)(1)(C)(ii)?

12. Are there burdens associated with providing information electronically to consumers that is required by law to be provided to them in written form? Are there burdens associated with allowing consumers to provide electronic consent or confirmation of consent prior to receiving the electronic information from your business pursuant to section 101(c)(1)(C)(ii)?

13. Explain any economies or benefits to your business resulting from the distribution of information electronically to consumers (e.g. storage, administrative processing), whether or not the information is provided pursuant to section 101(c)(1)(C)(ii). Are there economies or benefits related to allowing customers to provide electronic consent or confirmation of consent prior to receiving electronic information as required by ESIGN?

14. Do the benefits of providing electronic versions of information that is legally required to be provided in writing outweigh the burdens of allowing consumers an opportunity to provide electronic consent or confirmation of consent in order to receive the information?

15. Describe any feedback you have received from consumers or employees regarding the electronic consumer consent or confirmation procedures your business employs, also specifying whether the procedures are those required by ESIGN or were in place prior to ESIGN.

16. Describe the methods your business uses to verify:

A. That a consumer's consent or confirmation demonstrates the consumer's ability to access the requested information; and

B. That the electronic consents and confirmations are provided by the customers entitled to and intended to receive the electronic information.

17. What method, if any, in addition to the consent procedure in section 101(c)(1)(C)(ii) of the ESIGN Act could be employed to prevent consumer fraud? Would consumer fraud increase in the absence of the consent procedure of section 101(c)(1)(C)(ii)?

18. With regard to international business transactions, explain whether your company requests electronic consumer consent or consent confirmation prior to sending information electronically that is required to be provided to the consumer in written form. If so, explain if the method has had positive or negative consequences in international commerce.

19. If your business does not provide consumers the opportunity to receive information electronically by sending an electronic consent or consent confirmation, explain why your business does not provide this opportunity. Discuss any implementation problems.

Consumer Issues

20. As a consumer, how often do you conduct electronic transactions in which you request information electronically or agree to receive legally-required information electronically?

21. Have you obtained information electronically that was required by law to be provided to you in writing? If so, did the company or business provide an opportunity for you to provide electronic consent or confirm your consent before sending an electronic version of the information to you?

22. For an electronic transaction that provided an opportunity for you to submit electronic consent or consent confirmation before you received the information electronically, describe the effect of the process on you as a consumer. Were you made aware of any legal requirements regarding your options to receive the information in a different manner, such as on paper? If so, were you made aware of the legal requirements before you consented or confirmed your consent to receive the information in an electronic format?

23. As a consumer, what are the benefits, if any, of receiving electronic versions of information required by law to be provided in written form?

24. Explain whether the benefits of receiving electronic versions of information outweigh any burdens associated with providing electronic consent or consent confirmation prior to receiving the information.

Technology Issues

25. Are software programs that enable consumers to provide electronic consent or consent confirmation to companies readily available? Describe.

26. What technology or methods are available that would enable companies to verify that electronic consent or consent confirmation is transmitted by the specific persons entitled to receive electronic information?

27. Please explain whether additional technology is necessary to accomplish either the electronic consumer consent or company verification methods discussed in Questions 25 and 26, above.

28. Does the development of newer technologies impact the implementation of the consumer consent and consent confirmation provisions of section 101(c)(1)(C)(ii) of the ESIGN Act? If so, how.

IV. Public Workshop

Staff of the FTC and NTIA will conduct a public workshop to discuss issues raised by the comments received in response to this notice. Notification of interest in participating in the public workshop should be submitted in writing, separately from comments, to April Major, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or to Sallianne Fortunato, Telecom Policy Analyst, Office of Policy Analysis and Development, National Telecommunications and Information Administration (NTIA), Room 4716, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. We will select a limited number of parties from among those who submit comments to represent the significant interests affected by the issues raised in the notice. These parties will participate in an open discussion of the issues, including asking and answering questions based on their respective comments. In addition, the workshop will be open to the general public. The discussion will be transcribed and the transcription placed on the public record. The FTC and NTIA will consider the views and suggestions made during the workshop, in conjunction with the written and email comments, in formulating its report to Congress.

Parties will be selected on the basis of the following criteria:

1. The party submits a comment during the comment period.
2. During the comment period the party notifies FTC or NTIA of its interest in participating in the workshop.
3. The party's participation would promote a balance of interests being represented at the workshop.
4. The party's participation would promote the consideration and discussion of a variety of issues raised in this notice.
5. The party has expertise in activities affected by the issues raised in this notice.
6. The number of parties selected will not be so large as to inhibit effective discussion among them.
7. The party agrees to review the comments of all of the other workshop participants prior to the workshop.

The workshop will be held on April 3, 2001, from 8:30 a.m. until 5:00 p.m., at the FTC, 600 Pennsylvania Ave, NW., Washington, DC. Prior to that date, parties selected will be provided with copies of the comments from all other participants selected to participate in the workshop.

Public Participation

The workshop will be open to the public and is physically accessible to people with disabilities. To facilitate entry to the Federal Trade Commission building, please have a photo identification available and/or a U.S. Government building pass, if applicable. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Sallianne Fortunato at least three (3) days prior to the meeting via the contact information provided above.

Donald S. Clark,

Secretary, Federal Trade Commission.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 01–3609 Filed 2–12–01; 8:45 am]

BILLING CODE 6750–01–U

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Tuesday, March 20, 2001, 8:00 a.m.–6:00 p.m.; Wednesday, March 21, 2001, 8:00 a.m.–5:00 p.m.

Public participation sessions will be held on: Tuesday, March 20, 2001, 12:15–12:30 p.m, 5:45–6:00 p.m.; Wednesday, March 21, 2001, 11:45–12:00 noon, 4:05–4:20 p.m.

These times are subject to change as the meeting progresses. Please check with the meeting facilitator to confirm these times.

ADDRESSES: Doubletree Hotel Downtown, 1800 Fairfax, Boise, Idaho 83702, (208) 344–7691.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, INEEL Cab Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, Phone (208) 522–1662 or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations

to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda: (Agenda topics may change up to the day of the meeting. Please contact Jason Associates for the most current agenda or visit the CAB's Internet site at *www.ida.net/users/cab).*

Presentations on the following:

- Remedial Investigation/Feasibility Study data collection in the Subsurface Disposal Area
- Groundwater plume below the Idaho Nuclear Technology and Engineering Center
- Comprehensive Facilities and Land Use Plan
- 5-Year Update to the Spent Nuclear Fuel Environmental Impact Statement Voluntary Consent Order
- Environmental Assessment for the Deactivation, Decommissioning, and Dismantlement of a portion of Building CPP–603A at Idaho Nuclear Technology and Engineering Center

Briefings on the following:

- Status of the Yucca Mountain Environmental Impact Statement

Presentation and develop recommendations on:

- Budget priorities for FY 2003 under a restricted budget
- Wildfire Environmental Assessment
- Subsurface Science Initiative and the Vadose Zone Research Roadmap

Discussion of the following:

- A Site Specific Advisory Board Workshop on Alternatives to Incineration

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Wendy Lowe, INEEL CAB Facilitator, Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402 or by calling (208) 522–1662.

Issued at Washington, DC on February 8, 2001.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–3585 Filed 2–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATES: Tuesday, March 27, 2001, 1:00 p.m.–5:00 p.m.

ADDRESSES: Amarillo College Technical Center Campus, Room 9, James Bird Administration Building, Amarillo, Texas 79111.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; phone (806) 477–3125; fax (806) 477–5896 or e-mail *jjohnson@pantex.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

1:00 Agenda Review/Approval of Minutes
1:15 Co-Chair Comments
1:30 Task Force/Subcommittee Reports
2:00 Ex-Officio Reports
2:15 Break
2:30 Updates-Occurrence Reports-DOE
3:00 Presentation (To Be Announced)/ 24 hour information line: (806) 372–1945
4:00 Questions
Public Question/Comments
5:00 Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10:00 p.m. Monday through Thursday; 7:45 a.m. to 5:00 p.m. on Friday; 8:30 a.m. to 12:00 noon on Saturday; and 2:00 p.m. to 6:00 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 a.m. to 7:00 p.m. on Monday; 9:00 a.m. to 5:00 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on February 8, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–3586 Filed 2–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, March 1, 2001, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO, 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Quarterly update by the Defense Nuclear Facilities Safety Board.

2. Update on decontamination and decommissioning issues at Rocky Flats.

3. Recommendation(s) from the Environmental Restoration Committee.

4. Update on the EM SSAB Chairs meeting held in February.

5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; telephone (303) 420–7855. Hours of operations for the Public Reading Room are 9:00 a.m. to 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on February 8, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–3587 Filed 2–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Worker Advocacy Advisory Committee Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Worker Advocacy Advisory Committee.

The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that notice of this meeting be published in the **Federal Register**.

DATES: Thursday, March 8, 2001, 12:00 noon to 6:30 p.m. and Friday, March 9, 2001, 9:00 a.m. to 12:00 noon.

ADDRESSES: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Judy Keating, Executive Administrator, Worker Advocacy Advisory Committee, U.S. Department of Energy, EH–8, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone Number 202–586–7551, E-mail: judy.keating@eh.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice to the Director of the Office of Worker Advocacy of the Department of Energy on plans, priorities, and strategies for assisting workers who have been diagnosed with work-related illnesses.

Tentative Agenda

Welcome and Introduction
Opening Remarks
Subcommittee Reports and Discussion
Status and Direction of DOE Worker Advocacy Efforts
Relationships with Other Federal Agencies
Public Comment
Next Steps/Path Forward

Public Participation: This two-day meeting is open to the public on a first-come, first-serve basis because of limited seating. Written statements may be filed with the committee before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Judy Keating at the address or telephone listed above. Requests to make oral statements must be made and received five days prior to the meeting; reasonable provision will be made to include the statement in the agenda. The Chair of the committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except holidays.

Issued in Washington, DC on February 8, 2001.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 01–3584 Filed 2–12–01; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–200–000 and RP00–325–001 (Not Consolidated]

Colorado Interstate Gas Company; Notice of Technical Conference

February 7, 2001.

On December 29, 2000, Colorado Interstate Gas Company (CIG) filed revised tariff sheets in Docket No. RP01–200–000 to implement a new daily Scheduled Imbalance Penalty and a new interruptible Automatic Parking and Lending service (APAL). On January 2, 2001, CIG filed revised *pro forma* tariff sheets in Docket No. RP00–325–001 to comply with Order No. 637. Protests were filed in both dockets. On January 31, 2001 the Commission issued an order accepting and suspending the tariff sheets field in Docket No. RP01–200–000 to be effective July 1, 2001, subject to refund and subject to the outcome of a technical conference. The conference discussion was to address the proposal APAL service and daily penalty, as well as their relationship to issues raised in CIG's Order No. 637 proceeding.

Take notice that a technical conference to discuss various issues raised by CIG's filings will be held on Wednesday, February 28, 2001, at 9 a.m., in a room to be designed at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Participants should be prepared to address, consistent with the January 31 order, (1) whether existing data support an operational need for the proposed

service and penalty, (2) how the proposals in Docket No. RP01–200 relate to CIG's Order No. 637 compliance filing, (3) how GISB nomination processes are used to balance scheduled receipts and deliveries on CIG's system, (3) how CIG uses line pack and storage inventory to accommodate imbalances, and (4) any other concerns raised by CIG's filings.

All interested persons and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 01–3580 Filed 2–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–020]

Dominion Transmission, Inc.; Notice of Negotiated Rate

February 7, 2001.

Take notice that on January 30, 2001, Dominion Transmission, Inc. (DTI) tendered for filing tariff sheets disclosing recently negotiated rate transactions. DTI states that the tariff sheets relate to future negotiated rate transactions between DTI and Pool Operators. DTI and the Pool Operators will enter into Service Agreements under DTI's Rate Schedule IT, to become effective February 1, 2001. Under these agreements, DTI has agreed to provide certain interruptible transportation service for the Pool Operators, for delivery at Dominion's Appalachian Aggregation Points.

DTI states that copies of the filing have been served upon DTI's customers and interested state Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–3578 Filed 2–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–221–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Transporter Report

February 7, 2001.

Take notice that on January 31, 2001, Great Lakes Gas Transmission Limited Partnership (Great Lakes) as required under Section 4.3 of Rage Schedules FT and IT of its FERC Gas Tariff, Second Revised Volume No. 1, tendered for filing its supporting calculations underlying Great Lakes' Transporter's Use percentages applicable during the six-month period from July 1, 2000 through December 31, 2000.

Great Lakes states that copies of the filing are being served upon each of Great Lakes' firm customers and the Public Service Commission of the States of Minnesota, Wisconsin, and Michigan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 305.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before February 14, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 308.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–3581 Filed 2–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–340–001]

Gulf South Pipeline Company, LP; Notice of Pro Forma Tariff

February 7, 2001.

Take notice that on February 1, 2001, Gulf South Pipeline Company, LP (Gulf South) tendered for filing pro forma tariff sheets listed on the attachment to the filing, in compliance with Order No. 637 issued in Docket Nos. RM98–10 and RM98–12 on February 9, 2000.

On June 15, 2000 Gulf South filed the pro forma tariff sheets necessary to implement Order No. 637 on its system Since June Gulf South has participated in two technical conferences and has convened three customer meetings to discuss its implementation of Order No. 637. Through the course of these discussions, certain aspects of Gulf South's original filing have been modified or eliminated and new provisions have been added. While there is agreement on certain aspects of these proposed tariff sheets, there is not universal agreement on every aspect of this filing. The pro forma tariff sheets Gulf South has submitted replace the previously filed pro forma tariff sheets and represent a just and reasonable approach to implementing Order No. 637 on this pipeline. Pursuant to the parties' agreement during these discussions, comments on this filing must be filed on or before February 15, 2001. Reply Comments must be filed on or before February 23, 2001.

Gulf South states that copies of the filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before February 15, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are

on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Comments and protests may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–3579 Filed 2–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2901–008 and 2902–009]

Nekoosa Packaging Corporation; Notice of Availability of Draft Environmental Assessment

February 7, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Big Island Hydroelectric Project and the Holcomb Rock Hydroelectric Project, located on the James River in Bedford and Amherst Counties, Virginia, and has prepared a Draft Environmental Assessment (DEA) for the project. No federal lands or Indian Rservations are occupied by project works or located within the project boundary.

The DEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The DEA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 2901–008 and Project No. 2902–009 to all comments. For further information, contact James T. Griffin at (202) 219–2799 or Monte TerHaar at (202) 219–2768.

Comments may be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

David P. Boergers,

Secretary.

[FR Doc. 01–3576 Filed 2–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2720–032—Michigan/Wisconsin]

City of Norway, Michigan; Notice of Availability of Environmental Assessment

February 7, 2001.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for amendment of license for the existing Sturgeon Falls Hydroelectric Project, located on the Menominee River in Dickinson County, Michigan, and Marinette County, Wisconsin, and has prepared an Environmental Assessment (EA) for the project. In the EA, the Commission staff has analyzed the potential environmental effects of the proposed license amendment and has concluded that approval of the proposed action, with staff-recommended measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Commission's Public Reference Branch, Room 2A, located at 888 First Street, NE., Washington, DC 20426. The EA may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm*. Please call (202) 208–2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix ''Sturgeon Falls Project, FERC Project No. 2720–032'' to all comments. For further information, please contact Patti Leppert at (202) 219–2767. Comments and protests may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

David P. Boergers,

Secretary.

[FR Doc. 01–3577 Filed 2–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for a New License

February 7, 2001.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Notice of Intent to File an Application for New License.

b. *Project No:* 2082.

c. *Date Filed:* December 15, 2000.

d. *Submitted By:* PacifiCorp, 825 N.E. Multnomah, Suite 1500, Portland, OR 97232.

e. *Name of Project:* Klamath Hydroelectric Project.

f. *Location:* Klamath River in Oregon and California, and Fall Creek, a tributary in California. In Oregon, the Project is located in the Klamath County near the town of Klamath Falls, and in California, the Project is located in Siskiyou County, near the town of Hornbrook, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at PacifiCorp, 825 N.E. Multnomah, Suite 1500, Portland, OR 97232. Contact Todd Olson at 503–813–6657.

i. *FERC Contact:* John M. Mudre, (202) 219–1208, *John.Mudre@ferc.fed.us.*

j. *Expiration Date of Current License:* February 28, 2006.

k. *Project Description:* The proposed Klamath Project would contain six dams (five mainstream and one on a tributary), a waterway conveyance system with approximately seven miles of waterways, and seven powerhouses. The developments are: Eastside with 3.2 megawatts (MW) capacity, Westside with 600 kilowatt capacity, J.C. Boyle with 80 MW capacity, Copco No. 1 with 20 MW capacity, Copco No. 2 with 27

MW capacity, Iron Gate with 18 MW capacity, and Fall Creek with 2.2 MW capacity.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2082. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 28, 2004.

A copy of the notice of intent is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The notice may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

David P. Boergers,

Secretary.

[FR Doc. 01–3575 Filed 2–12–01; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Base Charge and Rates for Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed base charge and rates.

SUMMARY: The Western Area Power Administration (Western) is proposing an adjustment to the base charge and rates for Boulder Canyon Project (BCP) firm power service. The current base charge and rates expire September 30, 2001. The proposed base charge and rates will provide enough revenue to pay all annual costs, including interest expense, and repay required investment within the allowable period. The rate impacts are detailed in a rate package to be provided to all interested parties. The proposed base charge and rates are scheduled to go into effect on October 1, 2001, to correspond with the start of the Federal fiscal year (FY), and will remain in effect through September 30, 2002. This **Federal Register** notice initiates the formal process for the proposed base charge and rates.

DATES: The consultation and comment period will begin today and will end May 14, 2001. A public information forum at which Western will present a detailed explanation of the proposed base charge and rates is scheduled for April 4, 2001, beginning at 10 a.m. MST, at the Desert Southwest Customer Service Regional Office. A public comment forum at which Western will receive oral and written comments is scheduled for April 25, 2001, beginning at 10 a.m. MST, at the same location.

ADDRESSES: Written comments are to be sent to: Mr. J. Tyler Carlson, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, e-mail: carlson@wapa.gov. Western should receive written comments by the end of the consultation and comment period to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2768, e-mail: nasir@wapa.gov.

SUPPLEMENTARY INFORMATION: The proposed base charge and rates for BCP firm power service are designed to recover an annual revenue requirement that includes the investment repayment, interest, operation and maintenance, replacements, payment to states, visitor services, and uprating payments. These annual costs are reduced by the projected revenue from water sales, visitor services, water pump energy sales, facility use charge, regulation services, miscellaneous lease, late fees, and the prior year carryover to determine the annual revenue requirement. The projected annual revenue requirement is the base charge for firm power service and is divided by 50 percent to capacity dollars and 50 percent to energy dollars. The annual energy dollars are divided by the annual energy sales and the annual capacity dollars are divided by the annual capacity sales to determine the proposed energy rate and the proposed capacity rate.

TABLE 1.—PROPOSED FIRM POWER BASE CHARGE AND RATES

Effective period	Total composite (mills/kWh)	Base charge	Energy rate (mills/kWh)	Capacity rate ($/kW-month)	Capacity energy split
10/01/2001	10.75	$51,151,389	5.54	$1.06	50/50

The Deputy Secretary of the Department of Energy (DOE) approved the existing rate formula for calculating the base charge and rates in Rate Schedule BCP–F6 for BCP firm power service on September 18, 2000 (Rate Order No. WAPA–94, 65 FR 60932, October 13, 2000), which has been submitted to the Federal Energy Regulatory Commission (FERC) for final confirmation and approval. Existing Rate Schedule BCP–F6 became effective on October 1, 2000, through September 30, 2005. Under Rate Schedule BCP–F6, on October 1, 2000, the composite rate for FY 2001 was 9.75 mills per kilowatthour (mills/kWh), the base charge was $47,788,574, the forecasted energy rate was 5.04 mills/kWh, and the forecasted capacity rate was $0.99 per kilowattmonth (kWmonth). The proposed base charge and rates for BCP firm power service for FY 2002 will result in an overall composite rate increase of approximately 9 percent on October 1, 2001, when compared with the current BCP firm power service base charge and rates under Rate Schedule BCP–F6. The increase in the proposed base charge and rates is due to higher annual costs and lower energy sales. Table 2 compares the current base charge and rates in Rate Schedule BCP–F6 and the proposed base charge and rates along with the percentage change in the base charge and rates.

TABLE 2.—COMPARISON OF CURRENT AND PROPOSED BASE CHARGE AND RATES PERCENTAGE CHANGE IN FIRM POWER SERVICE BASE CHARGE AND RATES

	Current	Proposed	% Change
Effective Period	10/01/00	10/01/01	
Total Composite (mills/kWh)	9.75	10.75	9
Base Charge ($)	47,788,574	51,151,389	7
Energy Rate (mills/kWh)	5.04	5.54	9
Capacity Rate ($/kWmonth)	0.99	1.06	7

Since the proposed base charge and rates constitute a major rate adjustment as defined by the procedures for public participation in general rate adjustments, as cited below, both a public information forum and a public comment forum will be held. After review of the public comments, Western will recommend the proposed base charge and rates (as amended) be approved on a final basis by the DOE Deputy Secretary.

The proposed firm power service base charge and rates for BCP are being established pursuant to the DOE Organization Act 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat.388, as amended and supplemented by subsequent enactments, particularly section 9(c) the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the project involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator; and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents made or kept by Western for developing the proposed base charge and rates are and will be made available for inspection and copying at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, Arizona.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council On Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: February 1, 2001.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 01–3590 Filed 2–12–01; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6944–6]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before April 16, 2001.

ADDRESSES: U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 2225A, OECA/OC/AD, Washington, DC 20460. A copy of this ICR may be obtained from Stephen Howie, tel: (202) 564–4146; e-mail: howie.stephen@epa.gov.

FOR FURTHER INFORMATION CONTACT: Stephen Howie, tel: (202) 564–4146; FAX: (202) 564–0085; e-mail: howie.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: *Affected Entities:* Entities potentially affected by this action are those which produce pesticides.

Title: Recordkeeping Requirements for Producers of Pesticides under section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (FIFRA). ICR Number 0143.07. OMB Control Number 2070–0028. Expires 8/31/01.

Abstract: Section 8 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) states that the Administrator of the Environmental Protection Agency may prescribe regulations requiring producers, registrants and applicants for registration to maintain such records with respect to their operations and the

effective enforcement of this Act as the Administrator determines are necessary for the effective enforcement of FIFRA and to make such records available for inspection and copying as specified in the statute. The regulations at 40 CFR part 169 (Books and Records of Pesticide Production and Distribution) specify the following records that producers must keep and the disposition of those records: Production data for pesticides, devices, or active ingredients (including pesticides produced pursuant to an experimental use permit); receipt by the producer of pesticides, devices, or active ingredients used in producing pesticides; delivery, moving, or holding of pesticides; inventory; domestic advertising for restricted use pesticides; guarantees; exports; disposal; human testing; and tolerance petitions. Additionally, section 8 gives the Agency inspectional authority to monitor the validity of research data (including raw data), including data developed in accordance with Good Laboratory Practice Standards, and used to support pesticide registration. The EPA or States/Indian Tribes operating under Cooperative Enforcement Agreements make use of the records required by section 8 through periodically inspecting them to help determine FIFRA compliance of those subject to the provisions of the Act. In addition, producers themselves make use of such records in order to comply with reporting requirements under FIFRA section 7 and 40 CFR 167.85. (Those reporting requirements, concerning the types and amounts of pesticides produced annually at each producing site, are addressed in the ICR entitled ''Pesticide Report for Pesticide-Producing Establishments,'' OMB Docket Number 2000–0029.)

Since most of the records required to be maintained are likely to be collected and maintained in the course of good business practice, the records are generally stored on site at either the establishment producing the pesticide or at the place of business of the person holding the registration. However, the registrant may decide to transfer records relating to disposal of pesticides and human testing to EPA for storage because of a twenty year retention requirement for the records. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden: The average annual burden to the industry over the next three years is estimated to be 2 person hours per response.

Respondents/Affected Entities: 12,336.

Estimated Number of Respondents: 12,336.

Frequency of Responses: 1.

Estimated Total Annual Hour Burden: 24,672.

There are no capital/startup costs or operating and maintenance (O&M) costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: January 22, 2001.

Richard Colbert,

Director, Agriculture Division, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 01–3618 Filed 2–12–01; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 9, 2001.

A. Federal Reserve Bank of Atlanta (Cynthia C. Goodwin, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303–2713:

1. ABC Bancorp, Moultrie, Georgia; to acquire 100 percent of the voting shares of Tri-County Bank, Trenton, Florida.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. AmericaUnited Bancorp, Inc., Schaumburg, Illinois; to merge with National Bancorp, Inc., Sycamore, Illinois, and thereby indirectly acquire 100 percent of the voting shares of American National Bank of DeKalb County, Sycamore, Illinois.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Astra Financial Corporation, Prairie Village, Kansas; to acquire 17.43 percent

of the voting shares of First Missouri Bancshares, Inc., Brookfield, Missouri, and thereby indirectly acquire First Missouri National Bank, Brookfield, Missouri.

Board of Governors of the Federal Reserve System, February 7, 2001.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 01–3565 Filed 2–12–01; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–164]

Availability of Final Toxicological Profile for Polychlorinated Biphenyls (PCBs)

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the final updated toxicological profile for polychlorinated biphenyls (PCBs) which completes the twelfth set prepared by ATSDR. The announcement of seven toxicological profiles for the twelfth set was published in the **Federal Register** on November 16, 2000 (65 FR 69309).

FOR FURTHER INFORMATION CONTACT: Ms. Franchetta Stephens, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop E–29, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 1–(888) 422–8737 or (404) 639–6345.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amended the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the Environmental Protection Agency (EPA) regarding hazardous substances which are most commonly found at facilities on the National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the priority lists of hazardous substances. These lists identified 275 hazardous substances that ATSDR and EPA determined pose the most significant potential threat to human health. The availability of the revised list of the 275 most hazardous substances was announced in the **Federal Register** on October 21, 1999 (64 FR 56792). For prior versions of the list of substances see **Federal Register** notices dated November 17, 1997 (62 FR 61332); April 29, 1996 (61 FR 18744); April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); and February 28, 1994 (59 FR 9486).

The **Federal Register** notice announcing that the draft toxicological profile for PCBs was available for public review and comment was published February 10, 1999 (64 FR 6660). After the close of the 90-day public comment period, chemical-specific comments were addressed, and where appropriate, changes were incorporated into the profile. The public comments and other data submitted in response to the **Federal Register** notice bear the docket control number ATSDR–143. This material is available for public inspection at the Division of Toxicology, Agency for Toxic Substances and Disease Registry, Building 4, Suite 2400, Executive Park Drive, Atlanta, Georgia, (not a mailing address) between 8:00 a.m. and 4:30 p.m., Monday through Friday, except legal holidays.

Availability

This notice announces the availability of the final updated toxicological profile for PCBs which completes the twelfth set prepared by ATSDR. The following toxicological profile is now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, telephone 1–800–553–6847. There is a charge for these profiles as determined by NTIS.

Toxicological profile	NTIS order No.	Cas No.
POLYCHLORINATED BIPHENYLS	PB2000–108027	001336–36–3
AROCLOR 1016		012674–11–2
AROCLOR 1221		011104–28–2
AROCLOR 1232		011141–16–5
AROCLOR 1242		053469–21–9
AROCLOR 1248		012672–29–6
AROCLOR 1254		011097–69–1
AROCLOR 1260		011096–82–5
AROCLOR 1262		037324–23–5
AROCLOR 1268		011100–14–4

Dated: January 29, 2001.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 01–2988 Filed 2–12–01; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–01–20]

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 Anne O'Connor, 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

Evaluating Toolbox Training Safety Program for Construction and Mining—NEW—Centers for Disease Control and Prevention (CDC) National Institute for Occupational Safety and Health (NIOSH) is proposing to evaluate the effectiveness of various educational approaches utilizing ''toolbox'' safety training materials targeted to construction and mining industries. The mission of the National Institute for Occupational Safety and Health is to promote safety and health at work for all people through research and prevention.

In comparison to other industries, construction and mining, workers continue to have the highest rates of occupational fatalities and injuries. The Bureau of Labor Statistics estimated for 1999 that while the construction industry comprises only 6% of the workforce, they account for 20% of the fatal occupational injuries across all industry types (BLS, 1999). Similarly, though the mining industry comprises less than .5% of the workforce, this industry reflects 2% of all fatal occupational injuries (BLS, 1999).

Research on the effectiveness of safety and health training programs has revealed that training can lead to increases in worker knowledge and awareness of workplace safety practices. However, fewer evaluations of safety training effectiveness have investigated the relationship between various instructional approaches and the actual transfer of safety training information into workplace practices. Preliminary input from employees, managers, and union leaders representing construction and mining concerns revealed a desire in these industries for affordable safety training materials that can be effectively administered in short sessions on the job. Representatives from these industries reported that safety training sessions need to establish a closer connection between the safety recommendations and the background experiences and knowledge of the workers.

An instructional approach that may address these needs is often called ''toolbox'' or ''tailgate'' training. This type of training is characterized by brief (15 minute) workplace safety lessons. Despite the popularity of toolbox safety talks, research is needed to identify the most effective format for this medium. NIOSH will investigate the impact of using a narrative, case-study instructional approach versus a more typical, didactic ''learn the facts'' approach. Comparative analyses will examine differences in knowledge gain, safety attitudes and beliefs, and workplace behaviors. Findings from this research will help identify the conditions critical to effective toolbox safety training for mining and construction. The materials developed and evaluated during this study will be made available to the public at the conclusion of the evaluation.

Construction and mining companies who participate in the study will be randomly assigned to receive eight weekly toolbox safety training sessions that use either a case-study narrative or conventional instructional approach. The training sessions are designed to last fifteen minutes. The impact of these materials will be evaluated through the examination of changes in employee knowledge gains, attitudes toward safety practices, and the use of safety behaviors prior to and following their participation in the safety training program. Trainers will complete brief response cards each week. A sample of trainers will participate in structured interviews.

Findings of the study will be reported to participants and in the literature. There are no costs associated with participation in this study.

Respondents	No. of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total burden (in Hours)
Employees	400	2 (pretest and post-test surveys).	15/60	200
Trainers	40	8 (weekly customer feedback cards).	5/60	27
Trainers	10 (drawn from the 40 above)	1 (structured interviews)	60/60	10
Total				237

Dated: February 6, 2001.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation Centers for Disease Control and Prevention (CDC).

[FR Doc. 01–3560 Filed 2–12–01; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Warren Grant Magnuson Clinical Center; Submission for OMB Review; Comment Request; Customer and Other Partners Satisfaction Surveys

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Warren Grant Magnuson Clinical Center (CC), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 7, 2000, page 76659 and allowed 60-days for public comments. No public comments were received. The purpose of this notice is to allow an additional 30-days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Generic Clearance for Satisfaction Surveys of Customer and Other Partners.

Type of Information Collection Request: Extension (OMB Control Number: 0925–0458). *Need and Use of Information Collection:* The information collected in these surveys will be used by Clinical Center personnel: (1) To evaluate the satisfaction of various Clinical Center customers and other partners with Clinical Center services; (2) to assist with the design of modifications of these services, based on customer input; (3) to develop new services, based on customer need; and (4) to evaluate the satisfaction of various Clinical Center customers and other partners with implemented service modifications. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline the Clinical Center's operations. The major mechanisms by which the Clinical Center will request customer input is through surveys and focus groups. The surveys will be tailored specifically to each class of customer and to that class of customer's needs. Surveys will either be collected as written documents, as faxed documents, mailed electronically or collected by telephone from customers. Information gathered from these surveys of Clinical Center customers and other partners will be presented to, and used directly by management to enhance the services and operations of our organization. *Frequency of Response:* The participants will respond yearly. *Affected public:* Individuals and households, businesses and other for profit, small businesses and organizations. *Type of respondents:* These surveys are designed to assess the satisfaction of the Clinical Center's major internal and external customers with the services provided. These customers include, but are not limited to, the following groups of individuals: Clinical Center patients, family members of Clinical Center patients, visitors to the Clinical Center, National Institutes of Health investigators, NIH intramural collaborators, private physicians or organizations who refer patients to the Clinical Center, volunteers, vendors and collaborating commercial enterprises, small businesses, regulators, and other organizations. The annual reporting burden is as follows: *Estimated Number of Respondents:* 16,812; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* .3168; and *Estimated Total Annual Burden Hours Requested:* 5,327.6.

TABLE 1.—BURDEN ESTIMATE

Customer	Type of survey	Estimated number to be surveyed	Expected response rate (percent)	Time to complete survey (minutes)	Estimated burden hours
Clinical Center Patients	Questionnaire/Telephone	11,100	66	20	2436.6
Family Members of Patients	Questionnaire/Post-Card	8500	38	10	533.3
Visitors to the Clinical Center	Questionnaire Post-Card	3500	15	10	87.5
Former physician employees and trainees	Electronic	650	35	10	38.2
Guest workers/Guest researchers	Electronic	950	60	22	210
Extramural collaborators	Electronic	600	30	15	45
Vendors and Collaborating Commercial Enterprises	Questionnaire/Fax-Back	9500	17	18	475
Professionals and Organizations Referring Patients	Fax Back	9000	30	28	1250
Regulators	Fax Back	85	82	19	22
Volunteers	Questionnaire	850	58	28	230
Total			n = 16,812		5,327.6

Estimated costs to the respondents consists of their time; time is estimated using a rate of $10.00 per hour for patients and the public; $30.00 for vendors, regulators, organizations and $55.00 for health care professionals. The estimated annual costs to respondents for each year for which the generic clearance extension is requested is $24,531 annually. A contract has been let with a vendor to provide assistance in survey administration. The estimated annual cost of this contract is $25,000.00. There are no capital costs to report.

Requests for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Clinical Center and the agency, including whether the information shall have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response times, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project, or to obtain a copy of the data collection plans and instruments, contact: Dr. David K. Henderson, Deputy Director for Clinical Care, Warran G. Magnuson Clinical Center, National Institutes of Health, Building 10, Room 2C 146, 9000 Rockville Pike, Bethesda, Maryland 20892, or call non-toll free: (301) 496–3515, or e-mail your request or comments, including your address to: dhenderson@cc.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before March 15, 2001.

Dated: February 7, 2001.

David K. Henderson,

Deputy Director for Clinical Care, CC.

[FR Doc. 01–3602 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–M]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Evaluation of User Satisfaction With NIH Internet Sites

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 6, 2000, in Volume 65, No. 44, pages 11787–11788, under the title ''Request for Generic Clearance to Collect Customer Survey Data Pertaining to NIH Internet Sites,'' and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The NIH may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Evaluation of User Satisfaction with NIH Internet Sites. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. With this submission, the NIH, Office of Communications and Public Liaison, seeks to obtain OMB's generic approval to conduct customer satisfaction surveys. Since the late 1980's, the NIH has seized the opportunity to disseminate information and materials via the Internet. Today, rapid technological changes of the WWW warrant on-going constituent and resource analysis. With survey information, the NIH is enabled to serve, and respond to, the ever-changing demand by the public. The 'public' includes individuals (such as patients, educators, students, etc.) and interested communities (such as national or local organizations/institutions) and business. Survey information will augment current Web content, delivery, and design research which is used to understand the Web user, and more specifically, the NIH user community. Primary objectives are to (1) Classify NIH Internet users; (2) summarize and better understand customer needs; and (3) quantify the effectiveness/efficiency of current tools and delivery. Overall, the Institutes, Centers, and Offices of the NIH will use the survey results to identify strengths and weaknesses in current Internet strategies. Findings will help to (1) Understand user community and how to better serve Internet users; (2) discover areas requiring improvement in either content or delivery; (3) realize how to align Web offerings with identified user need(s); and (4) explore methods to offer and deliver information with efficacy and equity. *Frequency of Response:* Annual [As needed on an on-going and, possibly, concurrent basis (by Institute, Center, or Office)]. *Affected Public:* Users of the Internet. Primarily, this is an individual at their place(s) of access including, but not limited to, home or/and work environments. *Type of Respondents:* Public users of the NIH Internet site, *www.nih.gov,* which may include organizations, medical researchers, physicians and other health care providers, librarians, students, as well as individuals of the general public. *Estimated Number of Respondents:* 104,000. *Number of Respondents Per Respondent:* 1. *Average Burden Hours Per Response:* 0.084. *Burden Hours Requested:* 8684. Total annualized cost to respondents is estimated at $116,105. There are also no capital costs, operating costs and/or maintenance costs to report.

SURVEY TITLE: WEB CUSTOMER SATISFACTION SURVEY—ANNUAL REPORTING BURDEN [1]

[Web-based; Required for FEDERAL REGISTER requests under PRA, Paperwork Reduction Act.]

Survey area	No. respondents	Frequency of response	Avg. burden per response (hours)	Burden hours
NIH Organization-wide (1 entity)	4,000			334
Overall customer satisfaction	2,000	1	0.1002	200
Specific indicator: Top-level/Entry pages	1,000	1	0.0668	67
Specific indicator: Tools and initiatives	1,000	1	0.0668	67
Individual Institute/Office	100,000			8,350
Overall customer satisfaction	50,000	1	0.1002	5,010
Specific indicator: Top-level/Entry pages	25,000	1	0.0668	1,670
Specific indicator: Tools and initiatives	25,000	1	0.0668	1,670
Total	104,000		0.084	8,684

[1] Survey research firm, MediaMetrics, indicated 1,264,000 unique visitors to NIH sites in Dec, 1999. If fully implemented, an average month would survey 8,600 users (less than 0.007 of total average unique visitors to NIH sites).

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request additional information on the proposed collection of information contact: Dennis Rodrigues, NIH Office of Communications and Public Liaison, 9000 Rockville Pike, Bldg. 31, Rm. 2B03, Bethesda, Maryland 20892–2094,

or call non toll-free at (301) 435–2932. You may also e-mail your request to dr3p@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: February 1, 2001.

Anne Thomas,

Assoc. Director, Office of Communications and Public Liaison, National Institutes of Health.

[FR Doc. 01–3607 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK): Opportunity for Cooperative Research and Development Agreements (CRADAs) to Develop Monoclonal Antibodies and/or Other Reagents and Products for Use in Identifying the Dombrock Blood Group Carrier Molecule Aimed at Improving Blood Typing Practices Through Molecular Means

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) of the National Institutes of Health (NIH) is seeking Licensee(s) and/or proposals in the form of capability statements from potential collaborators for a Cooperative Research and Development Agreement (CRADA) to develop monoclonal antibodies and/or other reagents and products for use in identifying the Dombrock blood group carrier molecule. The U.S. government-owned technology is encompassed within U.S. Provisional Patent Application Serial No. 60/235,162, entitled ''Identification of The Dombrock Blood Group Glycoprotein as a Polymorphic Member of The ADP-Ribosyltransferase Gene Family''.

Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical or biotechnology company to develop monoclonal antibodies and/or other reagents for use in identifying the Dombrock blood group carrier molecule. The goals of the CRADA include the rapid publication of research results and timely commercialization of products or methods that may result from the research.

The potential Collaborator(s) capability statement should provide proof of expertise in blood typing practices through molecular means along with a brief commercialization plan. The NIH also will consider proposals from Collaborators with demonstrated expertise in developing kits designed to identify blood group antibodies in recipients of transfused blood or blood products.

DATES: Only written CRADA capability statements received by the NIDDK on or before March 30, 2001 will be considered during the initial design phase; confidential information must be clearly labeled. Potential Collaborators may be invited to meet with the Selection Committee at the Collaborator's expense to provide additional information. The Institute may issue an additional notice of CRADA opportunity during the design phase.

FOR FURTHER INFORMATION CONTACT: Capability statements should be submitted to Dr. Michael W. Edwards, Office of Technology Development, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, BSA Building, Suite 350 MSC 2690, 9190 Rockville Pike, Bethesda, MD 20814–3800; Tel: 301/496–7778, Fax: 301/402–0535; Email: mels@nih.gov.

SUPPLEMENTARY INFORMATION: A CRADA is an agreement designed to enable certain collaborations between Government laboratories and non-Government laboratories. It is not a grant, and is not a contract for the procurement of goods/services. The NIDDK is prohibited from transferring funds to a CRADA collaborator. Under a CRADA, NIDDK can contribute facilities, staff, materials, and expertise to the effort. The collaborator typically contributes facilities, staff, materials, expertise, and funding to the collaboration. The CRADA collaborator receives an exclusive option to negotiate an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA in a pre-determined field of use and may qualify as a co-inventor of new technology developed under the CRADA.

Identification of the 25 known human blood group molecules is of fundamental importance for the fields of erythroid cell biology and transfusion medicine. The molecular description of the ''Dombrock'' blood group system has been determined. A candidate gene was identified by in silico analyses of approximately 5000 expressed sequence tags (ESTs) from terminally differentiating human erythroid cells. Transfection experiments demonstrated specific binding of anti-Dombrock and confirmed glycosylphosphatidylinositol membrane attachment.

Currently, reagents may not be available to readily type all blood using serology. The information derived by this invention of the Dombrock blood group carrier gene can be used to type the human blood supply. The public health need is to improve the blood typing practices through molecular means and thereby prevent clinical problems associated with improperly cross-matched blood.

Capability Statements

A Selection Committee will utilize the information provided in the ''Collaborator Capability Statements'' received in response to this announcement to help in its deliberations. It is the intention of the NIDDK that all qualified Collaborators have the opportunity to provide information to the Selection Committee through their capability statements. The Capability Statement should not exceed 10 pages and should address the following selection criteria:

(1) The statement should provide specific details of the method to be utilized in the development of the monoclonal antibody to the Dombrock molecule.

(2) The statement should include a detailed plan demonstrating the ability to provide sufficient quantities of the agent in a timely manner for the duration of the study.

(3) The statement may include outline outcome measures of interest to the Collaborator. The specifics of the proposed outcome measures and the proposed support should include but not be limited to the following: monoclonal development expertise, specific funding commitment to support the advancement of scientific research, personnel services, facilities, equipment, or other resources that would contribute to the conduct of the commercial development.

(4) The statement must address willingness to promptly publish research results and ability to be bound

by PHS intellectual property policies (see CRADA: http://ott.od.nih.gov/newpages/crada.pdf).

Licensing Information

This technology was previously advertised in the December 26, 2000 issue of the **Federal Register** as a licensing opportunity [65 FR 81532]. Briefly, the gene and its polymorphisms that result in the Dombrock blood group antigenicity, for the first time, provide a route for reliable blood typing. Products aimed at improving blood typing practices through molecular means, thereby preventing mismatched blood transfusions, can also be developed with this technology. For the sake of completeness, the licensing contact is provided here: John Rambosek; 301/496–7056, ext. 270; fax: 301/402–0220; e-mail: rambosej@od.nih.gov.

Dated: February 5, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 01–3603 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Potentiation of Antineoplastic Agents Using Sigma 2 Ligands

Keith W. Crawford, Wayne D. Bowen (NIDDK)

DHHS Reference No. E–165–99/0 filed 11 May 2000

Licensing Contact: Catherine Joyce; 301/496–7735 ext. 244; e-mail: joycec@od.nih.gov.

The inventors have developed a therapeutic method of treating cancer through the administration of a sigma-2 receptor ligand, such as CB–184, in combination with the anti-neoplastic drugs, doxorubicin or actinomycin D. The novel combination produces marked tumor cell death at concentrations that produce little or no cytotoxicity when cells are exposed to the drugs alone. The protocol may be effective in treating tumors that are resistant to antineoplastics alone as a result of mutations of the p53 tumor suppressor gene.

Tumor Markers in Ovarian Cancer

Patrice J. Morin, Colleen D. Hough, Cheryl A. Sherman-Baust, Ellen S. Pizer (NIA)

DHHS Reference No. E–138–00/0 filed 03 Apr 2000

Licensing Contact: Catherine Joyce; 301/496–7735 ext. 244; e-mail: joycec@od.nih.gov.

This invention relates generally to the identification of ovarian tumor markers and diagnostic, prognostic and therapeutic methods for their use. The invention is based on the identification of a series of ovarian tumor marker genes that are highly expressed in ovarian epithelial tumor cells and are minimally expressed in normal ovarian epithelial cells.

Imidazoacridones With Anti-Tumor Activity

Cholody et al. (NCI)

DHHS Reference No. E–289–99/0 filed 07 March 2000

Licensing Contact: Girish Barua; 301/496–7735 ext. 263; e-mail: baruag@od.nih.gov.

The present invention relates to novel bifunctional molecules with anti-tumor activity. These agents are composed of an imidazoacridone moiety linked by a nitrogen containing aliphatic chain of various length and rigidity to another aromatic ring system capable of intercalation to DNA.

Previous studies on related symmetrical bis-imidazoacridones revealed that only one planar imidazoacridone moiety intercalates into DNA. The second aromatic moiety which is crucial for biological activity resides in DNA groove, and is believed to interact with DNA-binding proteins (most likely, transcription factors). It was hypothesized that action of bis-imidazoacridone constitute a new paradigm of how small molecules can interfere with gene transcription.

To enhance the biological activity, the inventors have developed unsymmetrical compounds in which one imidazoacridone system with relatively poor DNA-intercalating properties was replaced with much stronger intercalators, such as 3-chloro-7-methoxyacridine or naphthalimide moieties. These new compounds, especially those containing naphthalimide moiety are extremely cytotoxic against variety of tumor cells in vitro (IC50 at low nanomolar range) and kill tumor cells by inducing apoptosis. In vivo, in nude mice xenografted with human tumors, the compounds significantly inhibited growth of such tumors as colon tumor HCT116 and Colo205 as well pancreatic tumors (lines 6.03 and 10.05 freshly established from a patient).

Dated: February 6, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–3604 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed

Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Benzoylalkylindolepyridinium Compounds and Pharmaceutical Compositions Comprising Such Compounds

William G. Rice, Mingjun Huang, Robert W. Buckheit, Jr., David G, Covell, Grzegorz Czerwinski, Christopher Michejda, and Vadim Makarov (NCI)

DHHS Reference No. E–278–98/0 filed 18 Dec 2000

Licensing Contact: Sally Hu; 301/496–7056 ext. 265; e-mail: hus@od.nih.gov.

The present invention provides novel antiviral compounds active against HIV. These compounds, referred to as benzoylalkylindolepyridinium compounds (BAIPs) are effective against HIV isolates that have developed mutations rendering conventional drugs ineffective. BAIPs apparently do not require intracellular phosphorylation nor bind to the reverse transcriptase (RT) active site, which distinguishes their mechanism of action from the dideoxynucleoside (ddN) and acyclic nucleoside phosphonate (ANP) nucleoside analog drugs. ddN and ANP have proven clinically effective against limiting human immunodeficiency virus (HIV) infection, but resistance rapidly emerges due to mutations in and around the RT active site. The BAIPs also may be distinguished from non-nucleoside reverse transcriptase inhibitors (NNRTIs), in part because the BAIPs bind to a different site on the RT enzyme. The usage of NNRTIs is limited by the rapid emergence of resistant strains also. Moreover, unlike the NNRTIs, BAIPs of the present invention have been shown to be effective against HIV–1, HIV–2 and simian immunodeficiency virus (SIV) proliferation. Thus, BAIPs are broadly antiviral, non-nucleoside reverse transcriptase inhibitors (BANNRTIs).

Monoclonal Antibodies Specific for the E2 Glycoprotein of Hepatitis C Virus and Their Use in the Diagnosis, Treatment and Prevention of Hepatitis C

Darren Schofield, Suzanne U. Emerson, Robert H. Purcell, Harvey J. Alter (NIAID)

DHHS Reference No. E–017–01/0 filed 01 Dec 2000

Licensing Contact: Carol Salata; 301/496–7735 ext. 232; salatac@od.nih.gov.

Hepatitis C virus is an enveloped, single stranded RNA virus, approximately 50 nm in diameter, that has been classified as a separate genus in the Flaviviridae family. Most persons infected with hepatitis C virus develop chronic infection. These chronically infected individuals have a relatively high risk of developing chronic hepatitis, liver cirrhosis and hepatocellular carcinoma. There is currently no vaccine to prevent hepatitis C virus infection. The present invention relates to human monoclonal antibodies which exhibit immunological binding affinity for the hepatitis C virus E2 glycoprotein and are cross-reactive against different hepatitis C virus strains. These antibodies may be used in passive immunoprophylaxis for the prevention of hepatitis C virus infection and/or in passive immunotherapy for the treatment of hepatitis C.

Cell-Free Assembly of Lentiviral Capsids

Campbell et al. (NCI)

DHHS Reference No. E–287–00/0 filed 01 Dec 2000

Licensing Contact: Carol Salata; 301/496–7735 ext. 232; e-mail: salatac@od.nih.gov.

Dr. Campbell and his colleagues have discovered a novel method of assembling HIV immature capsids from recombinant purified Gag proteins in vitro. Specifically, the discovery is that the presence of certain phosphates is required for assembly of full-sized HIV capsids in vitro. Therefore, compounds which interfere with the effect of these phosphates on virus assembly or that deplete cellular pools of these phosphates, could be effective antiviral agents. This discovery then provides an in vitro screening method of identifying such potential antiviral agents. It also provides techniques for producing full-size virus-like particles in vitro. In fact, Dr. Campbell is the first to report the assembly of authentic viral capsids from full length Gag proteins in a completely defined system. Such proteins could be potentially useful as safe HIV vaccines or for delivery of nucleic acids or pharmacological agents in patients.

Sample Delivery System With Laminar Mixing for Microvolume Biosensing

Peter Schuck (ORS)

DHHS Reference No. E–143–00/0 filed 06 Nov 2000

Licensing Contact: Dale Berkley; 301/496–7735 ext. 223; e-mail: berkleyd@od.nih.gov.

The invention is a sample delivery system that comprises at least two microchannels in fluid communication with a sample chamber containing a biosensor. Biosensing for studying molecular recognition has become an important biophysical tool for biomedical research. The system aspirates a small sample volume into the system's microfluidic channels and applies a periodic oscillatory flow pattern to the sample. This prevents sample depletion in the stagnant layer across the sensor surface and results in efficient mixing of the sample during the biosensor measurement. Because the oscillatory flow pattern does not produce a net transport of the sample with time, there is a very long incubation time of the sensor surfaces with a very small sample volume. The new sample delivery system uses sample volumes of only 3 to 8 microliters, compared to the 25 to 200 microliter volumes of conventional systems, which use cuvette principles or continuous flow microfluidics. The present invention is substantially better than existing systems with respect to biosensor contact time and required sample volume.

In Vivo DNA Engineering Using the Recombination System (red) of Bacteriophage Lambda

Donald Court, Daiguan Yu, E-Chiang Lee, Nancy Jenkins, Neal Copeland (NCI)

DHHS Reference No. E–170–99/0

Licensing Contact: Peter Soukas; 301–496–7056 ext. 268; e-mail: soukasp@od.nih.gov.

Available for licensing through a Biological Materials License Agreement are several E. coli strains developed through a novel recombination system that allows for efficient chromosome engineering in E. coli using electroporated linear DNA. This technique provides for a much greater degree of accuracy and efficiency compared to current restriction endonuclease techniques for DNA engineering. The inventors' system is based on the recombination function designated red in bacteriophage lambda (λ). High recombination efficiency is obtained using a PCR-amplified donor DNA fragment with two flanking 30–40 base pairs of DNA homologous to the targeted DNA. In vivo cloning is accomplished by introducing linear plasmid vectors and linear DNA to be cloned with the segment to be cloned flanked by short homologies to the vector. The linear vector can also be used to subclone DNA segments directly from the bacterial chromosome or genomic BAC (PAC) clones by short homology mediated gap repair. The inventors have shown that when the red function is turned on for fifteen minutes, donor DNA can be recombined with a frequency 104–105 times higher than in a red off-control kept at 32 degrees C. The system is further described in Yu et al., ''An efficient

recombination system for chromosome engineering in Escherichia coli,'' P.N.A.S. 97(11):5978–5983 (2000).

Simian-Human HAV Chimeras Encoding a Hepatitis A Virus Having a Chimeric 2C Protein

G Raychaudhuri, SU Emerson, RH Purcell (NIAID)

Serial No. 60/015,642 filed 19 Apr 1996; PCT/US97/06506 filed 18 Apr 1997; Serial No. 09/171,387 filed 24 Mar 1999

Licensing Contact: Carol Salata, 301/496–7735 ext. 232; e-mail: salatac@od.nih.gov.

The claimed invention provides nucleic acid sequences which encode hepatitis A viruses having a chimeric 2C protein. The chimeric 2C gene consists of sequences from both the human strain and the simian AGM–27 strain. The chimeric virus is a promising candidate for an attenuated hepatitis A virus vaccine which may be more economical than an inactivated vaccine, especially in underdeveloped countries where hepatitis A in endemic. Additional information on the chimeras may be found in Rayachaudhuri et al., ''Utilization of chimeras between human(HM175) and simian(AGM27) strains of hepatitis A virus to study the molecular basis of virulence,'' J. Virol. 72:7467–7474(1998).

Novel Antimalarial Compounds, Methods of Synthesis Thereof, Pharmaceutical Compositions Comprising Same, and Methods of Using Same for Treatment and Prevention of Malaria

Michael R. Boyd (NCI), Gerhard Bringmann (EM), Sven Harmsen (EM) Roland Gotz (EM), T. Ross Kelly (EM), Matthias Wenzel (EM), Guido Francois (EM), J. D. Phillipson (EM), Laurent A. Assi (EM), Christopher Schneider (EM) Serial No. 08/195,547, filed 02/14/1994, now U.S. Patent 5,639,761; Serial No. 08/843,582, filed 04/16/1997; Serial No. 08/279,261, filed 07/22/1994, now U.S. Patent 5,552,550; Serial No. 08/674,362, filed 07/01/1996, now U.S. Patent 5,763,613; Serial No. 09/001,801, filed 12/31/1997, now U.S. Patent 6,140,339; Serial No. 09/527,002, filed 03/16/2000; Serial No. 08/279,339, filed 07/22/1994, now U.S. Patent 5,571,919; Serial No. 08/363,684, filed 12/23/1994, now U.S. Patent 5,578,729; Serial No. 08/674,359, filed 07/01/1996, now U.S. Patent 5,789,594; Serial No. 08/721,084, filed 09/24/1996, now U.S. Patent 5,786,482

Licensing Contact: Peter Soukas; 301/496–7056 ext. 268; e-mail: soukasp@od.nih.gov.

According to data recently reported by the World Health Organization (WHO), the death rate from malaria exceeds one million individuals per year. The Public Health Service seeks exclusive or non-exclusive licensee(s) to develop and commercialize the technology claimed within the portfolio of U.S. patents issued and pending, and corresponding international patents issued and pending. These patents and pending applications claim an exceptionally broad universe of novel naphthylisoquinoline alkaloid compounds, and methods of total synthesis thereof. Representative examples of these compounds have been shown to have potent in vitro activity against malaria parasites, including parasites that are highly resistant to available antimalarial drugs. Representative examples have also been shown to have potent in vivo activity against malaria parasites in animal models. Pharmaceutical compositions comprising these compounds, as well as methods of using the compounds to treat or prevent a malarial infection of a host, are claimed. The relative structural simplicity of this class of compounds, and the ready synthetic access thereto, provide unprecedented opportunities for structure-activity relationship (SAR), lead-optimization and antimalarial drug development. The technology is further described in the following publications: J. Nat Prod. 1997 Jul.;60(7):677–83 and Bioorg. Med. Chem. Lett. 1998 Jul.;8(13): 1729–34.

Dated: February 2, 2001.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–3605 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

The ImmunoChip

Matthias Lorenz (NCI)

DHHS Reference No. E–288–00/0 filed 29 Dec 2000

Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rodrigur@od.nih.gov.

The inventors have established a method to select sequences from databases for the construction of custom microarrays. Using this method, an immunological relevant microarray (ImmunoChip) was constructed. The ImmunoChip is a cDNA microarray which contains more than 13,000 different murine immunological-relevant genetic probes. The ImmunoChip can be used to study gene expression of immune cells or immune infiltrating tissues and organs. Specifically, the chip could be used for immunologically related research and/or vaccine development for a variety of human diseases which would include, but not necessarily limited to, cancer, infectious diseases, autoimmune diseases and allergies.

Water Soluble Amino Acid Analogs of Aminoflavone Compounds

Kenneth M. Snader et al. (NCI)

DHHS Reference No. E–279–99/0 filed 06 Apr 2000

Licensing Contact: Girish Barua; 301/496–7735 ext. 263; e-mail: baruag@od.nih.gov.

Many potential drugs of cancer chemotherapy intended for parenteral administration have been abandoned because the active ingredient is either slightly soluble or water-insoluble. Various methods have been developed to improve water solubility of these drugs. However, these methods can be complex and have a negative impact resulting from the use of co-solvents and complexing agents. The present invention addresses these problems by providing a method of producing water-

soluble analogues of water-insoluble drugs.

In particular, the present invention describes novel analogues derived from 5-aminoflavone (TK2339) compounds. These derivatives have shown good differential activity in the NCI 60-cell line in vitro cancer drug screen with potent and selective cytotoxicity against CAKI–1 and A498 renal, MCF–7 breast, and OVCAR–5 ovarian carcinoma cell lines. In addition, these derivatives have shown in vivo activity against CAKI–1 and A498 renal carcinoma xenographs.

To overcome poor solubility of many members of the flavone class of compounds, a series of more hydrophilic, polar conjugates were prepared which are capable of forming soluble salts. These novel compounds display improved solubility in aqueous solutions over the parent compound without sacrificing potent antitumor activity. Since these compounds possess very favorable pharmaceutical properties, they have the greater potential to be useful in the treatment of human cancers.

Dated: February 2, 2001.

Jack Spiegel,

Director, Division of Technology, Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 01–3606 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 01–33, Review of R13 Grants.

Date: February 16, 2001.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Natcher Building, Conference Room E½, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 01–34, Review of training grants.

Date: February 21–22, 2001.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Yujing Liu, MD, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 01–24, Review of R13 Grants.

Date: February 28, 2001.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372,

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 01–25, Review of R01s.

Date: April 5, 2001.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 01–28, Review of R44 Grants.

Date: April 6, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 01–17, Review of R01 Grants.

Date: April 11, 2001.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel.

Date: April 24, 2001.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3593 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee.
Date: February 21–23, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Yujing Liu, PhD, MD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res. 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (301) 594–2372.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: February 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3594 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institutes on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.
Date: March 13, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Virginian Suites, 1500 Arlington Blvd., Arlington, VA 22209.
Contact Person: Stanley C. Oaks, Jr., PhD, Scientific Review Branch, Division of Extramural Research, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: February 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3596 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.
Date: March 2, 2001.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate contract proposals.
Place: Four Points by Sheraton Bethesda, Embassy I Room, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Edward W. Schroeder, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, Md 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3597 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.
Date: February 27, 2001.
Time: 2:15 p.m. to 3:45 p.m.
Agenda: To review and evaluate grant applications.
Place: 6700 B Rockledge Drive, Room 223, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Nancy B. Saunders, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, ns120v@nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3598 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Develop Methods for Gathering Data and Completing Social Network Analysis in Drug Abuse Prevention''.

Date: February 15, 2001.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel ''Prevention Training''.

Date: March 1, 2001.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3599 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Services Research on NIDA Treatment CTN.

Date: March 2, 2001.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, Msc 041 9547, Bethesda, MD 20892–9547, (301) 435–1432.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Programs Projects.

Date: March 20, 2001.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3600 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Treatment Research Subcommittee, February 28, 2001, 10 a.m. to February 28, 2001, 6 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, N.W., Washington, DC, 20015 which was published in the **Federal Register** on January 26, 2001, Volume 66 FR 7923–24.

The date of this meeting has been changed to February 28–March 1, 2001. The Committee will convene from 10 a.m. to 6 p.m. on February 28, and from 8:30 a.m. to 1 p.m. on March 1. The meeting is closed to the public.

Dated: February 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3601 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 15, 2001.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Point Sheraton, 1201 K Street, N.W., Washington, DC 20005.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104,

MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group.

Date: February 26–27, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gordon L. Johnson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7802, Bethesda, MD 20892, (301) 435–1212, johnsong@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Alcohol and Toxicology Subcommittee 3.

Date: February 26–27, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Monarch Hotel, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular Sciences Integrated Review Group, Cardiovascular and Renal Study Section.

Date: February 26–27, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th St., NW., Washington, DC 20007.

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm 2180, MSC 7818, Bethesda, MD 20892, (301) 435–1169, dowellr@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 26–27, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Nadarajen A. Vydelingum, PhD, Scientific Review Administrator, Special Study Section—8, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, MSC 7854, Rm 5122, Bethesda, MD 20892, (301) 435–1176, vydelinn@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 26–27, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Experimental Virology Study Section.

Date: February 26–27, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, 301–435–1050, freundr@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 26–27, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 26–27, 2001.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group Physical Biochemistry Study Section.

Date: February 26–27, 2001.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721, rakhitg@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Social Sciences, Nursing, Epidemiology and Methods Integrated Review Group Nursing Research Study Section.

Date: February 26–28, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Gertrude McFarland, DNSC, FAAN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7816, Bethesda, MD 20892, (301) 435–1784.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 26–27, 2001.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, micklinm@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group Experimental Therapeutics Subcommittee 2.

Date: February 26–28, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Chevy Chase Pavilion, 4300 Military Rd., Wisconsin at Western Ave., Washington, DC 20015.

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group Reproductive Biology Study Section.

Date: February 26–27, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dennis Leszczynski, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 26–27, 2001.

Time: 9 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 26, 2001.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group Lung Biology and Pathology Study Section.

Date: February 27–28, 2001.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, Washington, DC Franklin Square, 815 14th Street, NW., Washington, DC 20005.

Contact Person: George M. Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, george_barnas@nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 28, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Gaithersburg, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Gopal C. Sharma, DVM, MS, PhD, Diplomate American Board of Toxicology, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184 MSC 7818, Bethesda, MD 20892, (301) 435–1783, sharmag@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 28, 2001.

Time: 8 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn, Washington, DC Franklin Square, 815 14th Street, NW., Washington, DC 20005.

Contact Person: Everett E. Sinnett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, sinnett@nih.gov

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group Microbial Physiology and Genetics Subcommittee 1.

Date: February 28–March 1, 2001.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW., Washington, DC 20037.

Contact Person: Martin L. Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, 301 435–1149.

Name of Committee: Oncological Sciences Integrated Review Group Radiation Study Section.

Date: February 28–March 2, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Ave, NW., Washington, DC 20037.

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 28–March 1, 2001.

Time: 6 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192 MSC 7846, Bethesda, MD 20892, (301) 435–1278.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 1, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124 MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.nih.gov

Name of Committee: Cardiovascular Sciences Integrated Review Group Pharmacology Study Section.

Date: March 1–2, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20853.

Contact Person: Jeanne N. Ketley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130 MSC 7814, Bethesda, MD 20892, (301) 435–1789.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 1–2, 2001.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Fortune Room, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Syed Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 1–2, 2001.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Grand Westin Hotel, 2350 M Street, NW., Washington, DC 20037–1417.

Contact Person: Marjam G. Behar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1180.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 1–2, 2001.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Clarion Hampshire Hotel, 1310 New Hampshire Ave, NW., Washington, DC 20036.

Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific

Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

Name of Committee: Cell Development and Function Integrated Review Group Cell Development and Function 6.
Date: March 1–2, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20852.
Contact Person: Richard D. Rodewald, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, Room 5142, MSC 7840, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1024, rodewalr@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 1–2, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Virginian Suites, 1500 Arlington Blvd., Arlington, VA 22209.
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301 435–0676, siroccok@csr.nih.gov

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group Bio-Organic and Natural Products Chemistry Study Section.
Date: March 1–2, 2001.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301 435–1728, radtkem@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 2, 2001.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Bill Bunnag, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5124, MSC 7854, Bethesda, MD 20892–7854, (301) 435–1177, bunnagb@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 2, 2001.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Luigi Giacometti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7850, Bethesda, MD 20892, (301) 435–1246.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 2, 2001.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Lee S. Mann, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 6, 2001.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 01–3595 Filed 2–12–01; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–05]

Notice of Draft Environmental Impact Statement: City of Hartford, CT; Section 108 Loan Guarantee/BEDI Grant

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development gives this notice to the public that the City of Hartford, Connecticut intends to prepare an Environmental Impact Statement (EIS) for the Adriaen's Landing Project. This Notice is in accordance with regulations of the Council on Environmental Quality as described in 40 CFR parts 1500–1508. Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the EIS effort as a ''Cooperating Agency.''

A Draft EIS will be completed for the proposed action described herein. Comments relating to the Draft EIS are requested and will be accepted by the contact person listed below. When the Draft EIS is completed, a notice will be sent to individuals and groups known to have an interest in the Draft EIS and particularly in the environmental impact issues identified therein. Any person or agency interested in receiving a notice and making comment on the Draft EIS should contact the person listed below within 45 days after the publication of this Notice.

ADDRESSES: All interested agencies, groups and persons are invited to submit written comments on the within-named project and the Draft EIS to the following contact person. Such comments should be received by the office of the contact person and all comments so received will be considered prior to the preparation and distribution of the Draft EIS.

Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and dates which the EIS should consider and recommended mitigating measures and alternatives associated with the proposed project. Federal agencies having jurisdiction by law, special expertise or other special interest should report their interests and indicate their readiness to aid the EIS effort as a ''cooperating agency.''

FOR FURTHER INFORMATION CONTACT: Dennis J. Johnson, Contract Manager, City of Hartford, Division of Management & Budget, Office of Grants Management, Room 108, 550 Main Street, Hartford, CT, 06103. Telephone: (860) 543–8650.

SUPPLEMENTARY INFORMATION:

A: Background

The City of Hartford, acting under authority of section 104(g) of the Housing and Community Development Act of 1974 (42 U.S.C. 5304(g)) and HUD's regulations at 24 CFR part 58, in cooperation with the Capital City Economic Development Authority, the Federal Highway Administration, and other interested agencies, will prepare an Environmental Impact Statement (EIS) to analyze potential impacts of constructing a 33-acre mixed use development complex including: (1) A retail/entertainment venue of a maximum of approximately 265,000 square feet, (2) an approximately 500,000 square feet convention center, (3) an approximately 700-room convention center hotel, (4) approximately 200 to 400 residential apartments, (5) an approximately 200,000 square feet future attraction (public interactive-entertainment and education venue), (6) parking facilities representing approximately 6,000 spaces, and (7) relocation and modification of sewer, water, and other utility infrastructure and vehicular and pedestrian traffic access modifications. Adriaen's Landing will be located in downtown Hartford along the Connecticut River. The estimated cost for this project is 650 million dollars.

In 1998, the City of Hartford applied for a competitive grant allocation from DHUD for $2 million in Brownfield Economic Development Initiative (BEDI) funds for the retail/entertainment component of the Adriaen's Landing project. The application was funded and will be coupled with up to $13 million in Section 108 loan authority, $5 million of which will be specifically used in conjunction with the BEDI funds on the retail/entertainment component of the project. The remaining $8 million in Section 108 loan authority will be used for eligible activities associated with the project.

B. Need for the EIS

The project may constitute an action significantly effecting the quality of the human environment, and an Environmental Impact Statement will be prepared by the City of Hartford in cooperation with the Capital City Economic Development Authority in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) on such project. Responses to this notice will be used to: (1) Determine significant environmental issues; (2) identify data which the EIS should address; and (3)identify agencies and other parties which will participate in the EIS process and the basis for their involvement.

This notice is in accordance with the regulations of the Council on Environmental Quality under its rule at 40 CFR part 1500. The Draft EIS will be published and distributed on or about 15 days after the date of this publication and a copy will be on file at the City of Hartford, Division of Management and Budget, Room 108, 550 Main Street, Hartford, CT 06103 and available for public inspection, or copies may be obtained at the same address, upon request.

C. Scoping

Scoping meetings were held on April 15, 1999 and November 16, 1999 at the Betances School in Hartford. The scope of issues to be addressed in the EIS was discussed, as well as an identification of the significant issues related to the proposed Adriaen's Landing project.

This Notice shall be in effect for one year. If one year after the publication of the Notice in the **Federal Register** a draft EIS has not been filed on the project, then the Notice for that project shall be canceled. If a draft EIS is expected more than one year after the publication of this Notice, a new and updated Notice must be published.

Dated: January 31, 2001.

Richard H. Broun,

Director, Office of Community Viability.

[FR Doc. 01–3554 Filed 2–12–01; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Revised Schedule of Remuneration for the UCX Program

Under section 8521(a)(2) of title 5 of the United States Code, the Secretary of Labor is required to issue from time to time a Schedule of Remuneration specifying the pay and allowances for each pay grade of members of the military services. The schedules are used to calculate the base period wages and benefits payable under the program of Unemployment Compensation for Ex-servicemembers (UCX Program).

The revised schedule published with this Notice reflects increases in military pay and allowances which were effective in January 2001.

Accordingly, the following new Schedule of Remuneration, issued pursuant to 20 CFR 614.12, applies to ''First Claims'' for UCX which are effective beginning with the first day of the first week which begins after March 31, 2001.

Pay grade	Monthly rate
(1) Commissioned Officers:	
0–10	$13,923
0–9	13,123
0–8	12,107
0–7	10,992
0–6	9,249
0–5	7,754
0–4	6,407
0–3	5,091
0–2	4,030
0–1	3,080
(2) Commissioned Officers With Over 4 Years Active Duty As An Enlisted Member Or Warrant Officer:	
0–3E	5,988
0–2E	4,894
0–1E	4,116
(3) Warrant Officers:	
W–5	6,771
W–4	5,833
W–3	4,856
W–2	4,155
W–1	3,551
(4) Enlisted Personnel:	
E–9	5,419
E–8	4,546
E–7	3,970
E–6	3,487
E–5	2,952
E–4	2,493
E–3	2,202
E–2	2,109
E–1	1,927

The publication of this new Schedule of Remuneration does not revoke any prior schedule or change the period of time any prior schedule was in effect.

Signed at Washington, D.C., on January 18, 2001.

Raymond L. Bramucci,

Assistant Secretary of Labor.

[FR Doc. 01–3610 Filed 2–12–01; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis in Mathematical Sciences (1204).

Date and Time: February 22–24, 2001; 8:30 a.m. until 5 p.m.

Place: Room 120, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Joseph P. Brennan, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–4876.

Purpose of Meeting: To provide advice and recommendations concerning proposal submitted to NSF for financial support.

Agenda: To review and evaluate proposals concerning the Algebra and Number Theory, and Combinatorics Program, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: February 6, 2001.

Karen J. York,

Committee Management Officer.

[FR Doc. 01–3574 Filed 2–12–01; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Wednesday, February 21, 2001.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594

STATUS: The three items are open to the public.

MATTERS TO BE CONSIDERED:

7327 Briefs of Accidents: Cessnas 172K and N79960, N89872 at Sarasota, FL on 3/9/2000 (MIA00FA103A/B) and Safety Recommendations to FAA re ATC procedures and practices.

7322 Survivability of Accidents Involving Part 121 U.S. Air Carrier Operations, 1983–1999.

7329 Hazardous Materials Accident Report: Rupture of Railroad Tank Car near Clymers, Indiana.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, February 16, 2001

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: February 9, 2001.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 01–3785 Filed 2–9–01; 3:55 pm]

BILLING CODE 7533–01–U

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting; Notice

Agency Holding the Meeting: Nuclear Regulatory Commission.

Date: Weeks of February 12, 19, 26, March 5, 12, 19, 2001.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Matters To Be Considered

Week of February 12, 2001

Wednesday, February 14, 2001

10:25 a.m. Affirmation Session (Public Meeting) (If needed)

Week of February 19, 2001—Tentative

Tuesday, February 20, 2001

10:25 a.m. Affirmation Session (Public Meeting) (If needed)

10:30 a.m. Briefing on Spent Fuel Pool Accident Risk at Decommissioning Plants and Rulemaking Initiatives (Public Meeting) (Contact: George Hubbard, 301–415–2870)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html.*

Week of February 26, 2001—Tentative

Monday, February 26, 2001

2:00 p.m. Meeting with the National Association of Regulatory Utility Commissioners (NARUC) (Public Meeting) (Contact: Spiros Droggitis, 301–415–2367)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html.*

Tuesday, February 27, 2001

10:25 a.m. Affirmation Session (Public Meeting) (If needed)

10:30 a.m. Briefing on Threat Environment Assessment (Closed-Ex. 1)

Week of March 5, 2001—Tentative

There are no meetings scheduled for the Week of March 5, 2001.

Week of March 12, 2001—Tentative

Monday, March 12, 2001

1:25 p.m. Affirmation Session (Public Meeting) (If needed)

1:30 p.m. Discussion of Management Issues (Closed-Ex. 2)

Week of March 19, 2001—Tentative

Thursday, March 22, 2001

10:25 a.m. Affirmation Session (Public Meeting) (If needed)

10:30 a.m. Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7320)

This meeting will be webcast live at the Web address—*www.nrc.gov/live.html.*

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: February 8, 2001.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 01–3738 Filed 2–9–01; 12:37 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17a–4; SEC File No. 270–198; OMB Control No. 3235–0279.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–4 (17 CFR 240.17a–4) requires exchange members, brokers and dealers to preserve for prescribed periods of time certain records required to be made by Rule 17a–3. In addition, Rule 17a–4 requires the preservation of records required to be made by other Commission rules and other kinds of records which firms make or receive in the ordinary course of business. These include, but are not limited to, bank statements, cancelled checks, bills receivable and payable, originals of communications, and descriptions of various transactions. Rule 17a–4 also permits broker-dealers to employ, under certain conditions, electronic storage media to maintain records required to be maintained under Rules 17a–3 and 17a–4.

These are approximately 7,525 active, registered broker-dealers. The staff estimates that the average amount of time necessary to preserve the books and records as required by Rule 17a–4 is 1.001 hours per broker-dealer per working day. Thus the staff estimates that because there are approximately 250 business day per year, the total compliance burden for 7,525 respondents is 1,883,131 hours.

The staff believes that compliance personnel would be charged with ensuring compliance with Commission regulation, including Rule 17a–4. The staff estimates that the hourly salary of a compliance manager is $82.50 per hour.[1] Based upon these numbers, the total cost of compliance for 7,525 respondents is $155,358,308 per year.[2] Despite the total burden hour decrease of 244,054 (resulting from the decrease in the number of respondents from 8,500 to 7,525), the increase in the estimated hourly salary used (from $48.08 as used in previous estimates to

[1] Securities Industry Association, Management and Professional Earnings, Table 051 (Compliance Manager) + 35% overhead (based on end-of-year 1998 figures).

[2] (1.001 hours per day × 250 days × 7,525 active, registered broker-dealer respondents) = 1,883,131 total hours per year. (1,883,131 hours × $82.50 per hour) = $155,358,308 per year.

the $82.50 obtained from the Securities Industry Association's survey of industry salaries, which was not previously available) caused the total cost of compliance to be $53,086,138 higher than the previous estimate of $102,272.170.

Written 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 the information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: February 6, 2001.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–3624 Filed 2–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Withdrawal of Application to Withdraw From Listing and Registration; (3Dshopping.com, Common Stock, No Par Value, and Warrants to Purchase Common Stock) File No. 1–15161

February 6, 2001.

On January 29, 2001, 3Dshopping.com (''Company'') filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value, and Warrants to Purchase Common Stock from listing and registration on the American Stock Exchange. Notice of the application was published on February 5, 2001, in the **Federal Register**, to solicit comment from interested persons.[3] On February 5, 2001, the Company withdrew its application.[4]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–3567 Filed 2–12–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] Securities Exchange Act Release No. 43902 (Jan. 30, 2001), 66 FR 8988.

[4] *See* letter from Bruce M. Schloss, Counsel to Company, to Matthew Boesch, Paralegal, Division of Market Regulation, Commission, dated February 5, 2001.

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Boulder Total Return Fund, Inc., Common Stock, $.01 Par Value) File No. 1–11652

February 6, 2001.

Boulder Total Return Fund, Inc., a Maryland corporation (''Company''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the Pacific Exchange (''PCX'').

The Security is currently listed and registered on both the PCX and the New York Stock Exchange (''NYSE''). The Company has determined to maintain the Security's listing and registration on the NYSE, but to withdraw its listing and registration on the PCX. In explaining its reasons for taking such action, the Company stated that the low volume of shares traded on the PCX does not justify the costs incurred through maintaining such listing.

The Company has stated in its application that it has complied with the rules of the PCX governing the withdrawal of a security from listing and registration by the issuer and that the PCX has in turn indicated that it will not oppose such proposed withdrawal. The Company's application shall not have any effect on the Security's continued listing and registration on the NYSE.

Any interested person may, on or before February 28, 2001, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Jonathan G. Katz,

Secretary.

[FR Doc. 01–3568 Filed 2–12–01; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24853; 812–12062]

Hillview Investment Trust II and Hillview Capital Advisors, LLC; Notice of Application

February 6, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: Applicants, Hillview Investment Trust II (the ''Trust'') and Hillview Capital Advisors, LLC (the ''Adviser'') request an order that would permit applicants to enter into and materially amend subadvisory agreements without shareholder approval.

Filing Dates: The application was filed on April 14, 2000 and amended on November 15, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 5, 2001, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state

the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Joseph A. Bracken, Hillview Capital Advisors, LLC, 1055 Washington Boulevard, Stamford, Connecticut 06901.

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, at (202) 942–0527, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust is a Delaware business trust registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and currently has two series, Hillview Alpha Fund and Hillview International Alpha Fund (each a ''Fund'' and collectively, the ''Funds''), each of which has its own distinct investment objective and policies. The Adviser, a Delaware limited liability company, serves as investment adviser to the Funds, and is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'').[1] The Adviser is a subsidiary of Value Asset Management, Inc., a privately held financial services holding company.

2. The Trust, on behalf of each Fund, has entered into an investment advisory agreement with the Adviser (''Advisory Agreement''). The Advisory Agreement has been approved by the Trust's board of trustees (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (''Independent Trustees''), as well as each Fund's initial shareholder. Under the terms of the Advisory Agreement, the Adviser, subject to oversight by the Board, has overall supervisory responsibility for the investment program of each Fund. The Trust and the Adviser have entered into investment subadvisory agreements (''Subadvisory Agreements'') with multiple subadvisers (''Subadvisers'') for each of the Funds. Under the Subadvisory Agreements, each Subadviser, subject to general supervision by the Adviser and the Board, has discretionary authority to invest a portion of a Fund's assets allocated to it by the Adviser. Currently, Hillview Alpha Fund has five Subadvisers and Hillview International Alpha Fund has four Subadvisers. Each of the Subadvisers is registered as an investment adviser under the Advisers Act. Future Subadvisers will be registered or exempt from registration under the Advisers Act. Each fund pays the Adviser a fee based on the Fund's average daily net assets.

3. The Adviser monitors the Funds and the Subadvisers and makes recommendations to the Board regarding allocation, and reallocation, of assets between Subadvisers and is responsible for recommending the hiring, termination and replacement of Subadvisers. The Adviser recommends Subadvisers based on a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives. Each Subadviser will be paid by the Trust at a rate that has been negotiated with each Subadviser by the Adviser and approved by the Board. Applicants also state that, as a condition to the requested order, shareholders of a Fund will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by a Fund that have been approved by the shareholders of the Fund.

4. Applicants request an order to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to a Subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds (''Affiliated Subadviser''). None of the current Subadvisers is an Affiliated Subadviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit them to enter into and materially amend Subadvisory Agreements without shareholder approval.

3. Applicants assert that the shareholders are relying on the Adviser's experience to select one or more Subadvisers best suited to achieve a Fund's desired investment objectives. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement will remain fully subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval, and that shareholders of a Fund will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by a Fund that have been approved by the shareholders of the Fund.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before applicants may rely on the requested order as to any Fund, the operation of the Fund in the manner described in the application will be approved by a majority of its outstanding voting securities, as defined in the Act, or by its initial shareholder, provided that, in the case of approval by

[1] The applicants request that any relief granted pursuant to the application also apply to future series of the Trust and any other registered open-end management investment companies and their series that: (a) Are advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser; (b) are managed in a manner consistent with this application, and (c) comply with the terms and conditions in the application (together, ''Future Funds''). The Trust is the only existing investment company that currently intends to rely on the requested order.

the initial shareholder, the pertinent Fund's shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below. Similarly, before a Future Fund may rely on the order requested in the application, the operation of the Future Fund in the manner described in the application will be approved by its initial shareholder before a public offering of shares of such Future Fund, provided that shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below.

2. Each Fund will disclose in its prospectus the existence, substance and effect of any order granted pursuant to the application. In addition, each Fund and any Future Fund relying on the requested order will hold themselves out to the public as employing the management structure described in the application. The prospectus with respect to each Fund and any Future Fund will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. At all times, a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Subadviser change is proposed for a Fund or any Future Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund or the Future Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser, shareholders will be furnished all information about the new Subadviser that would be included in a proxy statement, including any change in such disclosure caused by the addition of the new Subadviser. Each Fund will meet this condition by providing shareholders with an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934 within 90 days of the hiring of any new Subadviser.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets, and, subject to review and approval by the Board, will: (a) Set the Fund's overall investment strategies, (b) select Subadvisers, (c) when appropriate, allocate and reallocate a Fund's assets among multiple Subadvisers; (d) monitor and evaluate the performance of the Subadvisers, and (e) ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance.

8. No trustee or officer of the Trust, or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for: (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. Shareholders of a Fund will approve any change to a Subadvisory Agreement if such change would result in an increase in the overall management and advisory fees payable by the Fund that have been approved by the shareholders of the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–3566 Filed 2–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24856; 812–12410]

Mutual Fund Select Group, et al.; Notice of Application

February 8, 2001.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (''Act'') for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit the proposed reorganization of (a) Chase Vista Select Short-Term Bond Fund (''Select Short-Term Bond Fund''), a series of Mutual Fund Select Group (''MFSG''), with and into Chase Vista Short-Term Bond Fund (''Short-Term Bond Fund''), a series of Mutual Fund Group (''MFG''), and (b) Chase Vista Bond Fund (''Bond Fund''), a series of MFG, with and into Chase Vista Select Bond Fund (''Select Bond Fund''), a series of MFSG. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: MFSG, MFG, and The Chase Manhattan Bank (''Chase'').

Filing Dates: The application was filed on January 16, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 28, 2001, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 1211 Avenue of the Americas, 41st Floor, New York, New York, 10036.

FOR FURTHER INFORMATION CONTACT: John L. Sullivan, Senior Counsel, at (202) 942–0681, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. MFSG, a Massachusetts business trust,is registered under the Act as an open-end management investment

company and currently offers ten series, including Select Short-Term Bond Fund and Select Bond Fund. MFG, a Massachusetts business trust, is registered under the Act as an open-end management investment company and currently offers twenty series, including Bond Fund and Select Short-Term Bond Fund. Select Short-Term Bond Fund, Select Bond Fund, Short-Term Bond Fund and Bond Fund are each a ''Fund.'' Chase serves as investment adviser, and Chase Fleming Asset Management (USA) Inc. (''CFAM''), a wholly owned subsidiary of Chase, serves as subadviser to each Fund. Chase is not currently required to register as an investment adviser pursuant to section 202(a)(11)(A) of the Investment Advisers Act of 1940 (''Advisers Act''), while CFAM is an investment adviser registered under the Advisers Act. Chase holds of record for the benefit of others, in trust, more than 5% (in come cases, more than 25%) of the total outstanding voting securities of each of the Funds.

2. On September 19, 2000 and October 24, 2000, the boards of trustees of the Funds (together, the ''Boards'') including the trustees who are not ''interested persons'' of the Funds, as defined in section 2(a)(19) of the Act (''Independent Trustees''), unanimously approved plans of reorganization (''Plans'') under which Select Short-Term Bond Fund will reorganize into Short-Term Bond Fund, and Bond Fund will reorganize into Select Bond Fund (Select Short-Term Bond Fund and Bond Fund are ''Acquired Funds,'' and Short-Term Bond Fund and Select Bond Fund are ''Acquiring Funds''). Under the Plans, each Acquiring Fund will acquire all of the assets and liabilities of the corresponding Acquired Fund in exchange for shares of the Acquiring Fund (each a ''Reorganization''). The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the corresponding Acquired Fund's shares determined as of the close of regular trading on the New York Stock Exchange on the closing date of each Reorganization (each a ''Closing Date''), currently anticipated to occur as soon as practicable after the granting of the order of the Commission requested by the application. The value of the assets of each Fund will be determined according to the Fund's then-current prospectus and statement of additional information. On the Closing Date, each Acquired Fund will be liquidated by the distribution of the corresponding Acquiring Fund's shares pro rata to the shareholders of the Acquired Fund.

3. Applicants state that the in vestment objectives and policies of each Acquired Fund are identical to those of the corresponding Acquiring Fund. Select Short-Term Bond Fund currently offers shares that are not subject to sales charges or distribution fees, but are subject to shareholder servicing fees. Shareholders of Select Short-Term Bond Fund will receive shares of a class of Short-Term Bond Fund with the same sales charge and fee arrangements. Bond Fund offers three classes of shares, and Select Bond Fund currently offers only one class of shares. However, in connection with the Reorganizations, Select Bond Fund will introduce two new classes, and shareholders of Bond Fund will receive shares of Select Bond Fund subject to the same sales charges, distribution fees, and shareholder servicing fees as their current shares. For purposes of calculating deferred sales charges on certain shares, the amount of time a shareholder held shares of Bond Fund will be added to the amount of time the shareholder holds shares of Select Bond Fund. No sales charge will be imposed in connection with the Reorganizations. Chase will bear all of the costs associated with the Reorganizations.

4. Each Board, including the Independent Trustees, unanimously determined that the participation of its Fund in the respective Reorganization was in the best interests of the Fund and the shareholders, and that the interests of the shareholders of the Fund would not be diluted as a result of the Reorganization. In approving the Reorganizations, the Board of Each Acquired Fund considered various factors, including: (a) The terms of the Plan; (b) the Funds' historical, current and projected expense ratios; (c) the Funds' investment objectives and policies; and (d) the tax-free nature of the Reorganizations. The Board of each Acquiring Fund considered factors including: (a) The terms of the Plan; 9b) the potential operational and administrative efficiencies resulting from the Reorganizations, and (c) the fact that Chase would bear the expenses of the Reorganizations.

5. The Reorganizations are subject to a number of conditions, including that: (a) The shareholders of each Acquired Fund will have approved the Reorganization; (b) the Funds will have received opinions of counsel concerning the tax-free nature of each Reorganization; and (c) applicants will have received exemptive relief from the Commission to permit the Reorganization. An Acquired Fund or Acquiring Fund may terminate its Plan by written notice if certain conditions are not satisfied prior to the Closing Date. Applicants agree not to make any material changes to either Plan that affect the exemptive order without prior approval of the Commission or its staff.

6. A registration statement on Form N–14 with respect to each Reorganization, containing a proxy statement/prospectus, was filed on October 25, 2000 with the Commission and became effective on November 27, 2000. Definitive proxy materials were filed with the Commission on December 13, 2000 and first mailed to shareholders on or about December 14, 2000. The shareholders of each Acquired Fund considered and approved the Reorganizations at special meetings held on January 26, 2001.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include, among others: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied.

3. Applicants state that Chase holds of record for the benefit of others, in trust, more than 5% (in some cases, more than 25%) of the total outstanding voting securities of each of the Funds. Because Chase holds these securities, each Acquiring Fund and Acquired Fund may be deemed to be affiliated persons for reasons other than those set forth in rule 17a–8 and therefore unable to rely on the rule.

4. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants requests an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganizations. Applicants submit that the Reorganizations satisfy the standards of section 17(b). Applicants state that the Boards, including the Independent Trustees, unanimously found that the participation of the Acquired Funds and Acquiring Funds in the Reorganizations is in the best interest of each Fund and its shareholders and that such participation will not dilute the interests of the existing shareholders of each Fund. In addition, applicants state that the Reorganizations will be on the basis of the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–3626 Filed 2–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24855; 812–12404]

Nationwide Mutual Funds, et al.; Notice of Application

February 7, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act.

Summary of Application: Applicants request an order to permit a series of Nationwide Mutual Funds (''Nationwide'') to acquire all of the assets, net of liabilities, of a series of Principal Preservation Portfolios, Inc. (''Principal Preservation'') (the ''Reorganization''). Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

Applicants: Nationwide, Principal Preservation, Villanova Mutual Fund Capital Trust (''VMF''), and NorthPointe Capital, LLC (''NorthPointe'').

Filing Dates: The application was filed on January 16, 2001. Applicants have agreed to file an amendment to the application during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with copies of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 27, 2001, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549–0609. Applicants, c/o Elizabeth A. Davin, Esq., Nationwide Mutual funds, 1–35–10, One Nationwide Plaza, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Nationwide, an Ohio business trust, is an open-end management investment company registered under the Act. Nationwide currently offers thirty-seven series, including Nationwide Value Opportunities Fund (the ''Acquiring Fund''). Principal Preservation, a Maryland corporation, is an open-end management investment company registered under the Act. Principal Preservation currently offers nine series including Select Value Fund (the ''Acquired Fund,'' together with the Acquired Fund, the ''Funds'').

2. VMF is an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to the Acquiring Fund. VMF is a wholly-owned subsidiary of Villanova Capital, Inc. (''VCI''), a holding company. VCI is a subsidiary of Nationwide Financial Services. As of December 29, 2000, VMF owns approximately 13.3% of the Acquiring Fund's shares.

3. NorthPointe is an investment adviser registered under the Advisers Act and serves as investment adviser to the Acquired Fund. NorthPointe also serves as the sub-adviser of the Acquiring Fund. NorthPointe is a majority-owned subsidiary of VCI.

4. On December 12, 2000, and December 15, 2000, the board of trustees of Principal Preservation (''Principal Board''), and the board of trustees of Nationwide (''Nationwide Board'') and together with the Principal Board, the ''Boards''), respectively, including all of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), approved the agreement and plan of reorganization entered into between the Funds (''Plan''). Pursuant to the Plan, as a result of the Reorganization, the Acquiring Fund will acquire substantially all of the assets, net of liabilities, of the Acquired Fund in exchange for shares of the Acquiring Fund. The shares of the Acquiring Fund exchanged will have a total net asset value equal to the total net asset value of the Acquired Fund's shares determined as of the close of regular trading on the New York Stock Exchange on the business day preceding the day of the closing of the Reorganization (''Closing Date''). The value of the assets of the Acquired Fund will be determined according to the Acquired Fund's then-current prospectuses and statement of additional information. Contemporaneously with the distribution of the Acquiring Fund's shares pro rata to the Acquired Fund's shareholders, the Acquired Fund will satisfy its liabilities with its remaining assets and will be liquidated. Applicants anticipate the Closing Date will be on or around February 28, 2001.

5. Applicants state that the investment objectives and strategies of the Acquired Fund are similar to those of the Acquiring Fund. The Acquiring Fund has four classes of shares: Class A, Class B, Class C, and Investor Service Class. The Acquired Fund has three classes, Class A, Class B and Class C. Only Class A and Class B shares will be involved in the Reorganization. Neither the Acquiring Fund nor the Acquired Fund currently offers Class C shares, and the Acquired Fund has no Class C shares issued or outstanding. Class A

shares of the Acquired and Acquiring Funds are subject to a front-end sales charge and a rule 12b–1 distribution fee. Class B shares are subject to a contingent deferred sales charge and a rule 12b–1 distribution fee. No sales charges will be imposed in connection with the Reorganization. For purposes of calculating the deferred sales charge, shareholders of Class B of the Acquired Fund will be deemed to have held Class B shares of the Acquiring Fund since the date the shareholders initially purchased the shares of the Acquired Fund. NorthPointe and VCI will bear the Acquiring fund's costs associated with the Reorganization and B.C. Ziegler and Company (''Ziegler''), the Acquired Fund's distributor and administrator, will bear the Acquired Fund's costs.

6. The Boards, including all of the Disinterested Trustees, determined that the Reorganization was in the best interests of each Fund and its shareholders, and that the interests of the existing shareholders of the Funds would not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered various factors, including: (a) The investment objectives and strategies of the Acquired Fund and the Acquiring Fund; (b) the investment advisory and other fees paid by the Acquiring Fund and the projected expense ratio of the Acquiring Fund; (c) the terms and conditions of the Plans; (d) the anticipated tax consequences of the Reorganization for the Funds and their shareholders; and (e) the benefits to Ziegler, VMF and its affiliates that could result from the Reorganization.

7. The Reorganization is subject to a number of conditions precedent, including that: (a) The parties will have complied with all material aspects of the Plan on or before the Closing Date; (b) there will have been no material adverse changes to either the Acquiring or the Acquired Fund; (c) the Funds will have received opinions of counsel concerning the tax-free nature of the Reorganization; (d) the Acquired Fund's shareholders will have approved the Plan; (e) an N–14 registration statement relating to the Reorganization will have become effective with the Commission; (f) the Acquired Fund shall have declared and paid dividends and other distributions on or before the Closing Date; and (g) applicants will have received from the Commission the exemptive relief requested by the Application.

8. The Plan may be terminated and the Reorganization abandoned at any time prior to the Closing Date by the mutual consent of the parties. In addition, the plan may be terminated by either party under certain circumstances specified in the Plan. Applicants agree not to make any material changes to the Plan without prior approval of the Commission staff.

9. A registration statement on Form N–14 and definitive proxy solicitation materials have been filed with the SEC and were mailed to the Acquired Fund's shareholders on January 23, 2001. A shareholders meeting of the Acquired Fund is scheduled for February 22, 2001.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied.

3. Applicants believe that they may not rely on rule 17a–8 in connection with the Reorganization because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or common officers. Applicants state that the Acquiring Fund may be deemed to be an affiliated person of VMF because VMF owns more than 5% of the outstanding voting securities of the Acquiring Fund. Additionally, VMF and NorthPointe are under the common control of VCI. Therefore, the Acquiring Fund may be deemed an ''affiliated person of an affiliated person'' of the Acquired Fund.

4. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

5. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Reorganization. Applicants submit that the Reorganization satisfies the standards of section 17(b) of the Act. Applicants state that the terms of the Reorganization are reasonable and fair and do not involve overreaching. Applicants state that the investment objectives and strategies of the Acquired Fund are similar to those of the Acquiring Fund. Applicants also state that the Boards, including all of the Disinterested Trustees, found that the participation of the Acquired and the Acquiring Funds in the Reorganization is in the best interests of each Fund and its shareholders and that such participation will not dilute the interests of the existing shareholders of each Fund. In addition, applicants state that the Reorganization will be on the basis of the Funds' relative net asset values.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–3627 Filed 2–12–01; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43930; File No. 265–22]

Advisory Committee on Market Information

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission Advisory Committee on Market Information.

SUMMARY: The third meeting of the Securities and Exchange Commission Advisory Committee on Market Information (''Committee'') will be held on March 1, 2001, in the William O. Douglas Room, at the Commission's main offices, 450 Fifth Street, NW., Washington, DC, beginning at 9 a.m. The meeting will be open to the public, and the public is invited to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–22. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

FOR FURTHER INFORMATION CONTACT: Anitra Cassas, Special Counsel, Division of Market Regulation, at 202–942–0089; Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 10a, and the regulations thereunder, the Designated Federal Official of the Committee, David S. Shillman, has ordered publication of this notice that the Committee will conduct a meeting on March 1, 2001, in the William O. Douglas Room at the Commission's main offices, 450 Fifth Street, NW., Washington, DC beginning at 9 a.m. The meeting will be open to the public. This will be the third meeting of the Committee. The purpose of this meeting will be to discuss possible ways to improve the existing model for consolidating and disseminating market information in the equities markets, and other issues relating to the public availability of market information in the equities and options markets.

Dated: February 6, 2001.

Jonathan G. Katz,

Secretary.

[FR Doc. 01–3625 Filed 2–12–01; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer and to the OMB Desk Officer at the following addresses:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, DC. 20503

(SSA) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to him at the address listed above.

1. Site Review Questionnaire for Volume Payees, SSA–637; Site Review Questionnaire for Fee-for Service Payees, SSA–638; Site Review—Beneficiary Interview Form, SSA–639—0960–NEW. Titles II and XVI of the Social Security Act provide for the payment of Social Security and Supplemental Security Income (SSI) benefits to a relative, another person, or an organization when the best interests of the beneficiary will be served. Social security regulations outline the duties and responsibilities of representative payees and require a written report accounting for these benefits.

To ensure that benefits are being used properly for beneficiaries, SSA will conduct triennial site reviews for fee-for service payees and volume payees (organizations serving 100 or more beneficiaries). The reviews include a face-to-face meeting with the payee and appropriate staff and examination/verification of a sample of beneficiary records and supporting documentation, and may include beneficiary or custodian interviews. The information gathered using forms SSA–637, SSA–638 and SSA–639 will be used to ensure compliance with representative payment policies and procedures. It will enable SSA to identify poor payee performance and initiate corrective action as appropriate. The respondents are individuals who receive a fee for service, organizations serving as representative payees for 100 or more Social Security and Supplemental Security Income beneficiaries, and beneficiaries or custodians. Following is an estimate of the annual public reporting burden:

	Volume payees	Fee-for-service payees	Beneficiaries/custodians
Number of Respondents	347	333	2,040
Frequency of Response	1	1	1
Average Burden Per Response (Minutes)	60	60	10
Estimated Annual Burden (Hours)	347	333	340

2. Earnings Record Information—0960–0505. The information on Form SSA–L3231–C1 is used by SSA to ensure that the proper person is credited with earnings reported for a minor under age 7. The respondents are businesses reporting earnings for children under age 7.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

3. Employer Verification of Earnings After Death—0960–0472. The information collected on Form SSA–L4112 is used by SSA to determine whether wages reported by an employer are correct, when SSA records indicate that the wage earner is deceased. The respondents are employers who report wages for a deceased employee.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of

the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. Application Statement for Child's Insurance Benefits—0960–0010. Title II of the Social Security Act provides for payment of monthly benefits to the children of an insured retired, disabled or deceased worker, if certain conditions are met. The form SSA–4–BK is used by the Social Security Administration to collect information needed to determine whether the child or children are entitled to benefits. The respondents are children of the worker or individuals who complete this form on their behalf.

	Life claims	Death claims
Number of Respondents	925,000	815,000.
Frequency of Response	1	1.
Average Burden Per Response	10.5 minutes	15.5 minutes.
Estimated Annual Burden	161,875 hours	210,542 hours.

2. Request for Internet Service—Password—0960–NEW. SSA will collect and use information to establish a Password Data File. The file will be used to allow customers to conduct electronic business with the Agency. SSA will request the following information to verify the customer's identity: Name, Social Security Number, Password Request Code, Last Month Payment Amount and Director Deposit Account Number (if applicable). SSA may also ask for a shared secret created by SSA and mailed or electronically sent to the requestor. The respondents are individuals electing to conduct business with SSA in the electronic medium.

Number of Respondents: 250,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 41,667 hours.

Dated: February 7, 2001.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 01–3583 Filed 2–12–01; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/HCFA) Match Number 1094

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with the Health Care Financing Administration.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives, and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–2935 or writing to the Associate Commissioner, Office of Program Support, 2–Q–16 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records.

It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the Data Integrity Boards' approval of the match agreements;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: November 21, 2000.

Susan M. Daniels,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Health Care Financing Administration (HCFA) With the Social Security Administration (SSA)

A. Participating Agencies

SSA and HCFA.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, safeguards and procedures under which HCFA agrees to disclose Medicare non-utilization data to SSA. In some instances, if an individual has not used Medicare benefits for an extended period of time, this may indicate that the individual is deceased. SSA will use the selected data as an indicator of cases that should be reviewed to determine continued eligibility to SSA administered programs.

C. Authority for Conducting Matching Program

Sections 202 (42 U.S.C. 402) and 205(c) (42 U.S.C.405(c)) of the Social Security Act.

D. Categories of Records and Individuals Covered by the Matching Program

SSA will periodically furnish HCFA with an electronic finder file containing Title II Claim Account Number (CAN) and Title II Beneficiary Identification Code (BIC)) of beneficiaries from SSA's file of Master Beneficiary Records (SSA/OSR 60–0090) who receive Medicare.

SSA will request HCFA to match the finder file against their National Claims

History (09–70–0005) and the Health Insurance Master Record (09–70–0502) and release an electronic file to SSA containing certain identifying information on enrollees who have not used Medicare for a specified period of at least 12 consecutive months.

E. Inclusive Dates of the Match

The matching program shall become effective no sooner than 40 days after notice for the program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 01–3582 Filed 2–12–01; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2001–8840]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) and its Subcommittees will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. All meetings will be open to the public.

DATES: CTAC will meet on Thursday, March 8, 2001, from 9:00 a.m. to 3:30 p.m. The Subcommittees on Prevention Through People (PTP) and Hazardous Substances Response Standards will meet on Wednesday, March 7, 2001, from 8:30 a.m. to 4:00 p.m. These meetings may close early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before February 27, 2001. Requests to have a copy of written material distributed to each member of the Committee or Subcommittee should reach the Coast Guard on or before March 5, 2001.

ADDRESSES: CTAC will meet at the U.S. Department of Transportation (DOT), Nassif Building, 400 7th Street, SW., Washington, DC. CTAC will meet in rooms 6200–6204. The Subcommittees will meet at the same address, however, the PTP Subcommittee will meet in room 8440 and the Hazardous Substances Response Standards Subcommittee will meet in room 6332. Send written material and requests to make oral presentations to Commander Robert F. Corbin, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Robert F. Corbin, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meetings

Chemical Transportation Advisory Committee:

(1) Introduction of Committee members and attendees.

(2) Progress Reports from the PTP and Hazardous Substances Response Standards Subcommittees.

(3) Discussion on the causes and hazards of cargo tank over-pressurization.

(4) Status of Coast Guard and International Maritime Organization (IMO) regulatory activities.

(5) Coast Guard's Crew Alertness Campaign.

(6) Open—for marine chemical transportation related issues.

Subcommittee on PTP. The agenda includes the following:

(1) Continuation of work on conducting a coarse qualitative risk assessment to identify the major potential hazards in the chemical transportation industry with relation to the human element component.

Subcommittee on Hazardous Substances Response Standards. The agenda includes the following:

(1) Continued effort of the following Subcommittee workgroup activities; Response Standards, Response Resources, and Response Training.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than February 27, 2001. Written material for distribution at a meeting should reach the Coast Guard no later than March 5, 2001. If you would like a copy of your material distributed to each member of the Committee or Subcommittee in advance of the meetings, please submit 25 copies to the Executive Director no later than March 5, 2001.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Assistant to the Executive Director of CTAC as soon as possible.

Dated: February 5, 2001.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 01–3629 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Gainesville Municipal Airport, Gainesville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Gainesville Municipal Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before March 9, 2001.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 761–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Mike Land, City Manager, at the following address: Mr. Mike Land, 200 South Rusk, Gainesville, Texas 76240.

FOR FURTHER INFORMATION CONTACT: Ms. Mimchi Hoang, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650.

The request to release property may be viewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request

to release property at the Gainesville Municipal Airport under the provisions of the AIR 21.

On February 2, 2001, the FAA determined that the request to release property at Gainesville Municipal Airport, submitted by the City, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than April 2, 2001.

The following is a brief overview of the request:

The City of Gainesville requests the release of 39.45 acres of non-aeronautical airport property. The land was conveyed to the City of Gainesville by the Federal Government in a deed dated August 4, 1948 and referenced in Vol. 331, page 29 of Cooke County Deed Records. The release of the property will allow funding for maintenance, operation and development of the airport.

The estimated $217,000 sale proceeds will be deposited into the airport enterprise fund and expended within 3 years from the date of the sale.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the City of Gainesville.

Issued in Fort Worth, Texas on February 2, 2001.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 01–3660 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 01–04–I–00–PLB To Impose the Revenue from a Passenger Facility Charge (PFC) at Clinton County Airport, Plattsburgh, New York

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose the revenue from a PFC at Clinton County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 15, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph Hensel, Airport Manager at the following address: Clinton County Airport, 11 Airport Road, Suite 101, Plattsburgh, New York 12901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Clinton under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Robert Levine, Airport Engineer, New York Airports District Office, 600 Old Country Road, Garden City, New York 11530, Telephone: (516) 227–3807. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose the revenue from a PFC at Clinton County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 30, 2001, the FAA determined that the application to impose the revenue from a PFC submitted by County of Clinton was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 18, 2001.

The following is a brief overview of the application.

PFC Application No.: PFC 01–04–I–00–PLB.

Level of the proposed PFC: $3.00.

Proposed Charge Effective Date: May 1, 2001.

Proposed Charge Expiration Date: December 1, 2002.

Total Estimated PFC Revenue: $46,275.

Brief description of proposed project(s):

—On Airport Obstruction Removal (Phase I & II)

—Transient Apron Rehabilitation

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled/On Demand Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Federal Aviation Administration, Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Clinton.

Issued in Garden City, New York on January 30, 2001.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 01–3662 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (01–06–C–00–MFR) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Rogue Valley International—Medford Airport, Submitted by the Jackson County Airport Authority, Medford, Oregon

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Rogue Valley International—Medford Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 15, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Bern E. Case, A.A.E., Director of Aviation, at the following address: Jackson County Airport Authority, 3650 Biddle Road, Medford, Oregon 97504.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Rogue Valley International—Medford Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425) 227–2654; Seattle Airports District Office, SEA–ADO; 1601 Lind Avenue SW., Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at the same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (01–06–C–00–MFR) to impose and use PFC revenue at Rogue Valley International—Medford Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 31, 2001, the FAA determined that the application to impose and use the revenue from a PFC submitted to the Jackson County Airport Authority, Rogue Valley International—Medford Airport, Medford, Oregon, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 5, 2001.

The following is a brief overview of the application.

Level of the Proposed PFC: $4.50.

Proposed Charge-Effective Date: February 1, 2003.

Proposed Charge-Expiration Date: June 1, 2003.

Total Requested for Use Approval: $271,648.

Brief Description of Proposed Project: Parallel taxiway extension; High Intensity Runway Lights (HIRL)—runway lighting replacement.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Operations by Air Taxi/Commercial Operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, student instruction, non-stop sightseeing flights that begin and end at the airport and are conducted within a 25-mile radius of the airport, and other similar limited, irregular, special service operations by such Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rogue Valley International—Medford Airport.

Issued in Renton, Washington on January 31, 2001.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 01–3661 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at San Jose International Airport, San Jose, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before March 15, 2001.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph G. Tonseth, Director of Aviation, city of San Jose, Airport Department, at the following address: 1732 N. First Street, San Jose, CA 95112. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of San Jose under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at San Jose International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 19, 2001, the FAA determined that the application to impose and use a PFC submitted by the city of San Jose was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 20, 2001.

The following is a brief overview of the impose and use application No. 01–10–C–00–SJC:

Level of Proposed PFC: $4.50.

Proposed Charge Effective Date: January 1, 2005.

Proposed Charge Expiration Date: January 1, 2009.

Total Estimated PFC Revenue: $93,956,000.

Brief Description of the Proposed Projects: Runway 30R Reconstruction and Extension, Noise Attenuation within the Category II and III Eligibility Areas, and Taxiway Y Extension.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of San Jose.

Issued in Hawthorne, California, on January 30, 2001.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 01–3659 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the University of Oklahoma Westheimer Airport, Norman, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the University of Oklahoma Westheimer Airport under the provisions of Section 125 and 751 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21) and Section 352 of Public Law 106–346 (FY–2001 Department of Transportation Appropriation Act).

DATES: Comments must be received on or before March 15, 2001.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Edward Agnew, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Arkansas/Oklahoma Airports Development Office, ASW–630, Fort Worth, Texas 76193–0630.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David L. Boren, President at the following address: The University of Oklahoma, Office of the President, 660 Parrington Oval, Evans Hall, Room 110, Norman, OK 73019.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Hellen, Program Manager, Federal Aviation Administration, Oklahoma City Airports District Office, 5909 Phillip J. Rhoads Avenue, Oklahoma City, Oklahoma 73008.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the University of Oklahoma Westheimer Airport, Norman, Oklahoma under the provisions of the AIR–21 and Pubic Law 106–346.

On January 30, 2001, the FAA determined that the request to release property at the University of Oklahoma Westheimer Airport submitted by the University of Oklahoma met the requirements of Section 751 of AIR–21 and Section 352 of Public Law 106–346. FAA may approve the request, in whole or in part, at the conclusion of the comment period.

The following is a brief overview of the request:

The University of Oklahoma requests the release of approximately 550 acres of airport property identified as ''Parcel 1'' from the terms and conditions represented in Surplus Property and Grant Agreements. The release of property will permit the University of Oklahoma to derive proceeds from the use, operation and disposal of the land to construct and establish with the National Oceanic and Atmospheric Administration and the National Weather Service a weather facility.

Any person may inspect the University's request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person by contacting the University of Oklahoma.

Issued in Fort Worth, Texas on January 30, 2001.

Joseph G. Washington,

Acting Manager, Airports Division.

[FR Doc. 01–3658 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–2000–7827 and FMCSA–2000–7721]

Agency Information Collection Activities Under OMB Review: OMB Control Nos. 2126–003, 2126–0018, and 2126–0019

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: The FMCSA has sent the three Information Collection Requests (ICRs) described in this notice to the Office of Management and Budget (OMB) for review and comment. The ICRs describe each information collection and its expected burden. We published two **Federal Register** notices on these information collections on September 5, 2000 (65 FR 53801; 65 FR 53802). The notices had a 60-day comment period. We are required to send ICRs to OMB under the Paperwork Reduction Act.

DATES: Please submit comments by March 15, 2001.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Minor, (202) 366–4012 (for OMB No. 2126–0003), Ms. Marion Mills-Lee, (202) 358–7051 (for OMB No. 2126–0018), or Ms. Pat Wills, (202) 358–7043 (for OMB No. 2126–0019), Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20593, Attention: DOT Desk Officer. We request your comments on whether the collection of information is necessary for the FMCSA to meet its goal of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. OMB wants to receive comments within 30 days of publication of this notice in order to act on the ICRs quickly.

SUPPLEMENTARY INFORMATION:

1. *Title:* Inspection, Repair and Maintenance.

OMB Number: 2126–0003.

Background: Motor carriers must maintain, or require maintenance of, records documenting the inspection, repair and maintenance activities performed on their owned and leased motor vehicles. There are no prescribed forms. The records are used by the FMCSA and its representatives to verify motor carriers' compliance with the inspection, repair and maintenance standards in part 396 of the Federal Motor Carrier Safety Regulations.

Respondents: Motor carriers, commercial motor vehicle (CMV) drivers.

Estimated Total Annual Burden: 35,107,856 hours.

2. *Title:* Request for Revocation of Authority Granted.

OMB Approval Number: 2126–0018.

Background: Title 49 of the United States Code (U.S.C.) authorizes the Secretary of Transportation to promulgate regulations governing the registration of for-hire motor carriers of regulated commodities (49 U.S.C. 13902), surface freight forwarders (49 U.S.C. 13903), and property brokers (49 U.S.C. 13904). The FMCSA carries out this registration program under authority delegated by the Secretary of Transportation. Under Title 49 U.S.C. 13905, each registration is effective from

the date specified and remains in effect for such period as the Secretary of Transportation determines appropriate by regulation. Title 49 U.S.C. 13905(c) grants the Secretary the authority to amend or revoke a registration at the registrant's request. Form OCE–46 is used by transportation entities to voluntarily apply for revocation of their registration in whole or in part. The form requests the registrant's docket number, name and address, and the reasons for the revocation request.

Respondents: Motor carriers, freight forwarders, and brokers.

Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 250 hours (1,000 motor carriers × 15 minutes/60 minutes).

3. *Title:* Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers Under 49 U.S.C. 13902(c).

OMB Approval Number: 2126–0019.

Background: Title 49 U.S.C. 13902(c) sets forth basic licensing procedures for registering foreign motor carriers to operate across the border into the United States. Title 49 CFR 368 sets forth related regulations. The FMCSA carries out this registration program under authority delegated by the Secretary of Transportation. Foreign motor carriers use Form OP–2 to apply for registration with the FMCSA. The form requests information on the motor carrier's location, form of business, ownership and control, and proposed operations.

Respondents: Foreign motor carriers.

Average Burden per Response: 2 hours.

Estimated Total Annual Burden: 2,000 hours (1,000 motor carriers × 2 hours).

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.73.

Issued on: February 7, 2001.

Julie Anna Cirillo,

Assistant Administrator and Chief Safety Officer.

[FR Doc. 01–3633 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7645]

Developing and Implementing a Long-Term Strategy and Performance Plan for Improving Commercial Motor Vehicle, Operator, and Carrier Safety

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comments.

SUMMARY: To comply with section 104 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), the FMCSA developed a draft long-term strategy and performance plan for the period between fiscal years 2002 and 2009. Both the Congress and the Department of Transportation have stated long-term goals for improving commercial motor vehicle safety. This notice asks for public comment on the draft long-term plan. A copy of the plan is available electronically at *http://dmses.dot.gov/submit* by referencing the docket number at the heading of this document. It is also available electronically at *http://spp.fmcsa.dot.gov.*

DATES: You should submit your comments to this notice no later than February 28, 2001. We will consider late comments if we can within our tight deadline for action.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* Please include the docket number that appears in the heading of this document. You can examine and copy comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal Holidays. If you want notification of receipt of comments, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Proferes, Chief, Strategic Planning and Program Evaluation Division, (202) 366–9220, Federal Motor Carrier Safety Administration (MC–PRS), 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4 p.m., e.t, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit.* Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the web site. Internet users also may find this document at *http://spp.fmcsa.dot.gov.*

Authority: 49 U.S.C. 322; 49 CFR 1.73.

Dated: February 7, 2001.

Julie Anna Cirillo,

Assistant Administrator and Chief Safety Officer.

[FR Doc. 01–3631 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6209; Notice 2]

American Transportation Corp., Partial Grant and Partial Denial of Application for Decision of Inconsequential Noncompliance

American Transportation Corporation (AmTran) has determined certification labels on its AmTran buses are not in full compliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire selection and rims for motor vehicles other than passenger cars,'' and 49 CFR part 567, ''Certification,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' AmTran 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 noncompliances and the failures to meet part 567 are inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on September 27, 1999, in the **Federal Register** (64 FR 52118). NHTSA received no comments.

From October 27, 1991 through February 11, 1999, AmTran produced 1,514 buses with incorrect certification labels. AmTran states that the tire inflation pressure, as it is written on the certification label required by part 567, cannot support the weight capacity of the bus. AmTran has determined that a majority of the certification labels specify an inflation pressure that is five

to ten pounds below the inflation pressure that is necessary to support the weight of the bus when it operates with a full load of passengers. In addition, a few certification labels specify an inflation pressure that is ten to twenty pounds below the inflation pressure that is necessary to support the weight of the bus when it operates at maximum capacity. However, if the same tires are inflated to the maximum inflation pressure that is molded on the sidewall, then the tires will support the vehicle's weight. AmTran, in effect, is asking to be excused from preparing and sending corrected certification labels to the vehicles' owners.

In addition, the information on the certification label is required to be specified in English and metric units. According to AmTran, all of the AmTran buses produced prior to February 11, 1999, have a certification label that correctly specifies the weight of the vehicle without identifying it as ''lbs.''

AmTran supports its application for inconsequential noncompliance for the certification label by stating the following:

- Most buses do not run at full GVWR or full capacity.
- When buses operate at full capacity, it is for a very short period of time.
- There have been no tire warranty claims related to low pressure.
- Most tires are inflated by charts used at maintenance areas and the certification document is not used as a guide.
- The difference between the specified tire pressure and the required tire pressure is not a safety issue in this case.

In addition, AmTran supports its application for inconsequential noncompliance for the missing units of ''lbs'' by stating the following:

- Not aware of any problems created by the missing unit identification.
- It is understood in the U.S. bus industry that the GAWR and GVWR are listed in pounds.

We have reviewed the petitioner's arguments. The purpose for the labeling requirements in FMVSS No. 120 is to provide the vehicle user with information for the safe operation of the vehicle. FMVSS No. 120 paragraph S5.3.1 specifies that the certification label on buses include the recommended cold inflation pressure for the tires such that the sum of the load ratings of the tires on each axle is appropriate for the GAWR. Part 567 specifies the content and location of the certification label. In this case, no units of measure were provided.

Of the 1,514 buses, our analysis indicates that 557 have specified a tire inflation pressure on the label that is incorrect and may not be able to handle the load. Under-inflation and overloading produces structural failure in a tire; this could cause loss of control while the vehicle is traveling on the highway. This presents a clear and distinct safety hazard. However, the remaining 957 buses, based on our analysis of supplemental data, should be able to handle the full occupant capacity loads when the vehicle tires are inflated to the recommended inflation pressures.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to safety for 557 buses. Accordingly, in regards to the certification label, its application is hereby denied for 557 buses and granted for 957 buses. In addition, the replacement labels should contain the correct data in both metric and English units.

According to AmTran, the processes have been extensively reviewed, the causes of these noncompliances have been isolated, and changes in the processes have been instituted to prevent any future occurrences. In addition, the noncompliance is limited to the buses addressed in this notice, and AmTran stated that its future products will comply with the prescribed requirements.

The agency agrees with AmTran that the label on these buses whose only deficiency is the failure to provide the marking ''lbs'' for the units, and a metric conversion, is likely to achieve the safety purpose of the required label. The vehicle user will have the correct safety information in the prescribed location and format. Since petitioning the agency on this subject, AmTran has corrected its certification label process to include the prescribed format.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that this labeling noncompliance portion of its petition is inconsequential to motor vehicle safety. Accordingly, we grant its petition on this issue.

(49 U.S.C. 30118, 30120, delegations of authority at 49 CFR 1.50 and 501.8)

Issued on February 2, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–3557 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2001–8827; Notice 1]

Dan Hill & Associates, Inc.; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

We are asking for comments on the application by Dan Hill & Associates, Inc. (''Dan Hill''), of Norman, Oklahoma, for an exemption of one year from Motor Vehicle Safety Standard No. 224 *Rear Impact Protection.* Dan Hill asserts that compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard.

We are publishing this notice of receipt of the application in accordance with our regulations on the subject. This action does not mean that we have made a judgment yet about the merits of the application.

Dan Hill has been the beneficiary of temporary exemptions from Standard No. 224 beginning on January 26, 1998 (see 63 FR 3784 and 64 FR 49047). The information below is based on material from Dan Hill's original and renewal applications of 1998 and 1999, and its most recent application of 2000.

Why Dan Hill Says That it Continues To Need an Exemption

Dan Hill manufactures and sells a horizontal discharge trailer (''Flow Boy'') that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto various paving machines (''pavers''). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223 *Rear impact guards.* Dan Hill argued that installation of the rear impact guard will prevent the Flow Boy from connecting to the paver. Thus, Flow Boy trailers will no longer be functional. Paving contractors will be forced to use either competitors' horizontal discharge trailers that comply with Standard No. 224 or standard dump body trucks or trailers which, according to Dan Hill, have inherent limitations and safety risks. In spite of

exemptions totaling three years, Dan Hill avers that it has been unable to engineer its trailers to conform and needs a further year in which to do so. We discuss below its efforts to conform in greater detail.

Dan Hill's Reasons Why it Believes That Compliance Would Cause it Substantial Economic Hardship and That it Has Tried in Good Faith To Comply With Standard No. 224

Dan Hill is a small volume manufacturer. Its total production in the 12-month period preceding its latest petition was 151 units. In the absence of a further exemption, Dan Hill asserts that approximately 70 percent of its work force would have to be laid off. If the exemption were not renewed, Dan Hill's gross sales would decrease by $8,313,337 in 2001. Its cumulative net income after taxes for the fiscal years 1998, 1999, and 2000 was $454,556, but net income has declined in 2000 and 1999 from the year before. It projects a net loss of $291,947 for fiscal year 2001.

The **Federal Register** notices cited above contain Dan Hill's arguments of its previous good faith efforts to conform with Standard No. 224 and form the basis of our previous grants of Dan Hill's petitions. Dan Hill originally asked for a year's exemption in order to explore the feasibility of a rear impact guard that would allow the Flow Boy trailer to connect to a conventional paver. It concentrated its efforts between 1998 and 1999 in investigating the feasibility of a retractable rear impact guard, which would enable Flow Boys to continue to connect to pavers. The company has examined the various alternatives: installation of a fixed rear impact guard, redesign of pavers, installation of a removable rear impact guard, installation of a retractable rear impact guard, and installation of a ''swing-up'' style tailgate with an attached bumper. Its latest efforts to conform, from September 1999 until December 2000, involve the design of a swing-in retractable rear impact guard. A review of its design, by Tech, Inc., shows that this, too, is not feasible. Among other things, Tech, Inc., is concerned that ''the tailgate, hinges, and air cylinders will not meet the criteria of the Standard 224-plasticity requirement,'' and that ''the bumper is a potential safety hazard'' because if the gate were raised and ''a flagman or a trailer stager is in between the paver and the bumper while the gate and bumper is rising, the bumper could cause serious injury or death.'' A copy of Tech Inc.'s report has been filed in the docket as part of Dan Hill's petition. The report also indicates that the costs associated with this design may be cost prohibitive ''when trying to win business in a highly competitive, yet narrow marketplace.''

Dan Hill's Reasons Why it Believes That a Temporary Exemption Would Be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Dan Hill believes that an exemption would be in the public interest and consistent with traffic safety objectives because, without an exemption, ''within a short time, production of the trailer will cease entirely. Jobs will be lost and a major employer in McClain County will be lost. This would mean a significant loss to many people in the state, including shareholders, lenders, employees, families, and other stakeholders.'' Dan Hill's production represents less than .05% of trailers manufactured. The amount of time actually spent on the road is limited because of the need to move the asphalt to the job site before it hardens. Nevertheless, Dan Hill has taken recent efforts to enhance the conspicuity of Flow Boy trailers by: 1. adding ''High intensity flashing safety lights; 2. Doubling the legally required amount of conspicuity taping at the rear of the trailer; 3. [adding] Safety signage; 4. [adding] Red clearance lights that normally emit light in twilight or night-time conditions; and 5. Installation of a rear under-ride protection assembly 28″ above the ground and 60″ in width.'' Finally, the location of the rear tires is such that the tires act as a buffer ''and reduce the likelihood of impact with the semi-trailer and the vehicle's windshield or interior of the vehicle significantly.''

How You May Comment on Dan Hill's Application

If you would like to comment on Dan Hill's application, please do so in writing, in duplicate, referring to the docket and notice number, and mail to: Docket Management, National Highway Traffic Safety Administration, room PL–401, 400 Seventh Street, SW, Washington, DC 20590.

We shall consider all comments received before the close of business on the date indicated below. Comments are available for examination in the docket in room PL–401 both before and after that date, between the hours of 10 a.m. and 5 p.m. To the extent possible, we also consider comments filed after the closing date. We will publish our decision on the application, pursuant to the authority indicated below.

Comment closing date: March 5, 2001.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on February 8, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–3663 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–8809; Notice 1]

EGO Vehicles Inc.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standards Nos. 119 and 120

EGO Vehicles Inc. (''Ego''), a Delaware corporation located in Fairhope, Alabama, through counsel in San Francisco, California, has applied for a temporary exemption of its ''eGO'' motor driven cycle from Federal Motor Vehicle Safety Standards Nos. 119, *New Pneumatic Tires for Vehicles Other Than Passenger Cars,* and No. 120, *Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars.* The basis of the application is that an exemption would make easier the development or field evaluation of a low-emission motor vehicle and would not unreasonably lower the safety level of the vehicle.

This notice of receipt of an application is published in accordance with the requirements of 49 U.S.C. 30113(b)(2) and does not represent any judgment of the agency on the merits of the application.

EGO seeks an exemption of two years from the requirements of Standards Nos. 119 and 120. Standard No. 119 establishes performance and endurance, marking, and treadwear indicators for motorcycle tires. Standard No. 120 establishes requirements for DOT-certified rims of certain sizes to ensure compatibility with DOT-certified tires of the same sizes. The eGO vehicle is not a motorcycle of conventional configuration, having a ''chassis design * * * similar to that of a large scooter, but it has handlebars, a seat and other components that make it more similar in appearance and operation to a bicycle.'' The eGO is powered by a single electric motor producing less than 2 horsepower, and is therefore a ''motor driven cycle,'' a subcategory of motorcycle under NHTSA definitions and regulations. The speed of the eGO ''is limited by its controller and drivetrain configuration to less than 20 miles per hour.''

EGO states that it has located ''many high-performance bicycle rims and tires,'' but that ''none of the

manufacturers of these components has certified these products as compliant with FMVSS 119 or 120.'' The most similar components that EGO has located are moped tires and rims. However, the ''performance capabilities of these tires and rims are excessive given the low weight, low speed, and limited range of the eGO. Further, the dimensions of these products are not compatible with the eGO's chassis design or braking system * * *.''

EGO deems its only alternative to develop a specific tire and rim combination. However, testing ''would be an extremely high cost to bear for a manufacturer of a new and innovative low-emission vehicle that is still at an early stage of its product life.'' EGO argues that ''amortizing the cost of testing over the limited number of vehicles sold would significantly increase the cost of this low-emission vehicle, reducing the market for the product and Petitioner's ability to evaluate its performance and market potential.''

In EGO's opinion, an exemption would not unreasonably degrade the safety of the vehicle ''because Petitioner has selected the eGO's rims and tires based on stringent design criteria, considering the operating environment, gross vehicular weight, and top speed of the vehicle.'' Standard No. 119 ''seems especially inappropriate because the eGO cannot, by design, operate continuously for longer than approximately 75 minutes, or be propelled at a speed greater than 20 mph.'' The endurance test (S6.1) ''simulates conditions that would never be encountered by the operator of the vehicle simply by nature of the vehicle's design and performance restraints.'' The purpose of Standard No. 120, in EGO's view ''is to assure that a consumer will be able to purchase a tire that fits a given rim, and that any tire purchased in a given size will fit a rim of that size.'' The petitioner believes it has achieved that purpose in the tires and rims it has selected for the eGO, and it will encourage owners ''to use the replacement rims that we specify in the documentation provided with the vehicle.''

According to eGO, an exemption would be in the public interest as supporting an innovative low-cost, low-emission means of transportation. An exemption would be consistent with the objectives of traffic safety because the petitioner intends to comply with the regulations that the Consumer Product Safety Commission has promulgated for bicycles. The petitioner also points out that no tire and rim requirements are imposed by Standard No. 500, *Low-speed Vehicles,* on passenger-carrying vehicles with a slightly higher maximum speed (20 to 25 mph).

Interested persons are invited to submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the application will be published in the **Federal Register** pursuant to the authority indicated below. *Comment closing date:* March 15, 2001.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on February 8, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–3664 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7705, Notice 1]

Receipt of Applications for Decision of Inconsequential Noncompliance

The following companies, Osram Sylvania Products, Inc., (Osram); Subaru of America, Inc., (Subaru); Koito Manufacturing Co., LTD. (Koito); North American Lighting, Inc. (NAL); Stanley Electric Co., LTD, (Stanley); and General Electric Company (GE) have determined that certain H1 replaceable light sources they manufactured or used in lamp assemblies did not have the ''DOT'' marking required under Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices, and Associated Equipment.''

This notice of receipt of these applications is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the applications.

Under the requirements of S7.7(a) of FMVSS No. 108, each replaceable light source shall be marked with the symbol ''DOT.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), the above companies have petitioned for a determination that their failure to mark light sources with ''DOT'' is inconsequential to motor vehicle safety and have filed appropriate reports pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Osram produced 841,283 H1 replaceable light sources without the required ''DOT '' marking. In its part 573 report, Osram stated that it was not possible to determine exactly how many light sources were used in headlamp assemblies as opposed to those which were used in fog lamp assemblies.

Between February 1999 and January 2000, NAL used 118,756 of these Osram replaceable light sources in headlamp assemblies. Subaru installed 110,784 of these NAL headlamp assemblies in model year 2000 Legacy vehicles from February 1999 through February 2000.

Stanley used 30,426 of the Osram replaceable light sources in headlamp assemblies intended for Honda Preludes produced between October 22, 1998 and January 27, 2000. Koito used 12,340 of the Osram replaceable light sources in headlamp assemblies it manufactured between June 1999 and January 2000.

A separate group of replaceable light sources with the same noncompliance was manufactured by GE. GE produced 2,490 of these between April 1, 1999 and March 23, 2000. The GE replaceable light sources are included in this notice for simplicity because the issue is identical.

All of the petitioners have indicated that the subject replaceable light sources, with the exception of the absence of the ''DOT'' marking, fully comply with all the performance and design requirements of FMVSS No. 108 and do not constitute any risk to motor vehicle safety. Osram has submitted confidential test data to show this.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the

authority indicated below. Comment closing date: March 15, 2001.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: February 2, 2001.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 01–3558 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–8808, Notice 1]

Philips Lighting Company Receipt of Application for Decision of Inconsequential Noncompliance

Philips Lighting Company, Somerset, New Jersey, has determined that certain H3–55W replaceable light sources it manufactured do not have the ''DOT'' marking required under Federal Motor Vehicle Safety Standard (FMVSS) No. 108, ''Lamps, Reflective Devices, and Associated Equipment.'' The total number of light sources sold without this marking from January 1998 to December 1999 was 67,299.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Under the requirements of S7.7(a) of FMVSS No. 108, each replaceable light source shall be marked with the symbol ''DOT.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Philips Lighting Company has petitioned for a determination that its failure to mark light sources with ''DOT'' is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

Philips Lighting Company has indicated that the subject replaceable light source, with the exception of the absence of the ''DOT'' marking, fully complies with all the performance and design requirements of FMVSS No. 108 and does not constitute any risk to motor vehicle safety and has submitted test results to show this.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: March 15, 2001.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: February 8, 2001.

Noble N. Bowie,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 01–3630 Filed 2–12–01; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reasons for Delay''

1. Awaiting additional information from applicant.

2. Extensive public comment under review.

3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.

4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on February 6, 2001.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
	New Exemption Applications		
11862–N	The BOC Group, Murray Hill, NJ	4	03/30/2001
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	03/30/2001
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	03/30/2001
12158–N	Hickson Corporation, Conley, GA	4	03/30/2001
12181–N	Aristech, Pittsburgh, PA	4	03/30/2001
12248–N	Ciba Specialty Chemicals Corp., High Point, NC	4	03/30/2001
12290–N	Savage Industries, Inc., Pottstown, PA	4	03/30/2001
12307–N	Kern County Dept. of Weights & Measures, Bakersfield, CA	4	03/30/2001
12339–N	BOC Gases, Murray Hill, NJ	4	03/30/2001
12353–N	Monson Companies, South Portland, ME	4	03/30/2001
12355–N	Union Tank Car Company, East Chicago, IN	4	03/30/2001
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	03/30/2001

Application No.	Applicant	Reason for delay	Estimated date of completion
12406–N	Occidental Chemical Corporation, Dallas, TX	4	03/30/2001
12412–N	Great Western Chemical Company, Portland, OR	4	03/30/2001
12422–N	Connecticut Yankee Atomic Power Co., East Hampton, CT	1, 4	03/30/2001
12433–N	The Lighter Company, Inc., Miami, FL	4	03/30/2001
12434–N	Salmon Air, Salmon, ID	4	03/30/2001
12440–N	Luxfer Inc., Riverside, CA	4	02/28/2001
12454–N	Ethyl Corp., Richmond, VA	4	02/28/2001
12455–N	United States Marine Safety Association, Philadelphia, PA	4	02/28/2001
12456–N	Baker Hughes, Houston, TX	4	02/28/2001
12469–N	Department of Energy, Germantown, MD	4	03/30/2001
12473–N	Old Bridge Metals & Chemicals, Inc., Old Bridge, NJ	4	03/30/2001
12475–N	Chemetall GmbH Gesellschaft, Langlshiem, DE	4	03/30/2001
12476–N	Fisher-Rosemount Petroleum, Tulsa, OK	4	02/28/2001
12479–N	Luxfer Gas Cylinders, Riverside, CA	4	02/28/2001
12495–N	South Carolina Electric & Gas Co., Jenkinsville, SC	4	02/28/2001
12497–N	Henderson International Technologies, Inc., Richardson, TX	4	02/28/2001
12515–N	FIBA Technologies, Inc., Westboro, MA	4	02/28/2001
12516–N	Poly-Coat Systems, Inc., Houston, TX	4	03/30/2001
12518–N	Air Products & Chemicals, Inc., Allentown, PA	4	03/30/2001
12531–N	Worthington Cylinder Corporation, Columbus, OH	4	03/30/2001
	Modifications to Exemptions		
7060–M	Federal Express, Memphis, TN	4	03/30/2001
8013–M	Praxair, Inc., Danbury, CT	4	03/30/2001
8086–M	The Boeing Co (Mil Aircraft & Missiles Sys Group), Seattle, WA	4	02/28/2001
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	02/28/2001
8554–M	Orica USA Inc., Englewood, CO	4	02/28/2001
10656–M	Conf. of Radiation Control Program Directors, Inc., Frankfort, KY	4	02/28/2001
10672–M	Burlington Packaging, Inc., Brooklyn, NY	4	03/30/2001
11296–M	Heritage Transport, LLC, Indianapolis, IN	4	03/30/2001
11316–M	TRW Automotive, Queen Creek, AZ	4	03/30/2001
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	03/30/2001
11769–M	Great Western Chemical Company, Portland, OR	4	03/30/2001
11769–M	Great Western Chemical Company, Portland, OR	4	03/30/2001
11769–M	Hydrite Chemical Company, Brookfield, WI	4	03/30/2001
11798–M	Air Products and Chemicals, Inc., Allentown, PA	4	03/30/2001
11798–M	Anderson Development Company, Adrian, MI	4	03/30/2001
11911–M	Transfer Flow, Inc., Chico, CA	4	03/30/2001
12074–M	Van Hool NV, B–2500 Lier Koningshooikt, BG	1	02/28/2001
12130–M	FIBA Technologies, Inc., Westboro, MA	4	02/28/2001
12178–M	STC Technologies, Inc., Bethlehem, PA	1	02/28/2001

[FR Doc. 01–3556 Filed 2–12–01; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33999]

Somerset Terminal Railroad Corporation—Operation Exemption—A Line of Railroad Owned by Joseph C. Horner

Somerset Terminal Railroad Corporation (STRC), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to operate under a perpetual, irrevocable, exclusive and assignable easement over approximately 1.25 miles of rail line owned by Joseph C. Horner. The rail line is located in the Township of Bridgewater and the Borough of Manville, Somerset County, NJ, and is part of a rail line known as the Reading Company New York Branch (also known as the Raritan Valley Connecting Track), and identified as Line Code 0326, between milepost 57.25 at Manville Yard and milepost 58.50 at a junction with New Jersey Transit's commuter line. STRC also acquired title to a railroad bridge spanning the Raritan River and connecting the properties on which its easement lies.[1]

STRC proposes to operate the line to connect with CSX Transportation, Inc. (CSXT) and Norfolk Southern Railway Company at points of intersection on the rail line. Pursuant to an agreement with Mr. Horner, STRC will replace Bridgewater Resources, Inc. (BRI), the Somerset County waste transfer station. BRI previously arranged for an independent contractor to transport the waste processed by BRI over the line for connection with CSXT. Mr. Horner will permit STRC to transport its refuse across its property and will permit STRC to move freight from other shippers bordering on the property upon which the easement exists.

The transaction was due to be consummated on or after January 29, 2001.[2]

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33999, must be filed with

[1] According to STRC, the line was conveyed to Mr. Horner by deed from Consolidated Rail Corporation on August 24, 1995, and was comprised of two pieces or parcels of land together with track, track materials, two switches, and the railroad bridge.

[2] STRC reported that the transaction was consummated during the year 2000. STRC's representative has been notified by Board staff that the earliest the transaction could be consummated was January 29, 2001, the effective date of the exemption (7 days after the exemption was filed).

the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Edward M. Fink, Esq., 51 Jamaica Street, Edison, NJ 08820.

Board decisions and notices are available on our website at *www.Stb.Dot.Gov.*

Decided: February 6, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 01–3526 Filed 2–12–01; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 8282 and 8283

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8282, Donee Information Return (Sale, Exchange or Other Disposition of Donated Property) and Form 8283, Noncash Charitable Contributions.

DATES: Written comments should be received on or before April 16, 2001 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Donee Information Return (Sale, Exchange or Other Disposition of Donated Property) (Form 8282) and Noncash Charitable Contributions (Form 8283).

OMB Number: 1545–0908.

Form Number: 8282 and 8283.

Abstract: Internal Revenue Code section 170(a)(1) and regulation section 1.170A–13(c) require donors of property valued over $5,000 to file certain information with their tax return in order to receive the charitable contribution deduction. Form 8283 is used to report the required information. Code section 6050L requires donee organizations to file an information return with IRS if they dispose of the property received within two years. Form 8282 is used for this purpose.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or household and business or other for-profit organizations.

Form 8282

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 4 hrs., 23 min.

Estimated Total Annual Burden Hours: 4,380.

Form 8283

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 2 hr., 1 min.

Estimated Total Annual Burden Hours: 3,015,000.

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: February 5, 2001.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 01–3537 Filed 2–12–01; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request

February 2, 2001.

The Office of Thrift Supervision (OTS) has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Interested persons may obtain copies of the submission(s) by calling the OTS Clearance Officer listed. Send comments regarding this information collection to the OMB reviewer listed and to the OTS Clearance Officer, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

DATES: Submit written comments on or before March 15, 2001.

OMB Number: 1550–0023.

Form Number: OTS Form 1313 and 1568.

Type of Review: Regular.

Title: Thrift Financial Report.

Description: OTS collects financial data from insured savings associations, their subsidiaries, and their holding companies in order to assure their safety and soundness as depositories of the personal monies of the general public. The OTS monitors financial positions and interest-rate risk so that adverse conditions can be remedied promptly.

Respondents: Savings and Loan Associations and Savings Banks.

Estimated Number of Responses: 1,060.

Estimated Burden Hours Per Response: 136 hours.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 143, 810 hours.

Clearance Officer: Ralph E. Maxwell, (202) 906–7740, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

OMB Reviewer: Alexander Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 01–3623 Filed 2–12–01; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 66, No. 30
Tuesday, February 13, 2001

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

The President

3 CFR

Executive Order 13182 of December 23, 2000

Adjustments of Certain Rates of Pay

Correction

In Presidential document 00–33450 appearing on page 82879 in the issue of Friday, December 29, 2000, Section 7 should read as follows:

SEC. 7. *Effective Dates.* Schedule 8 is effective January 1, 2001. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2001.

[FR Doc. C0–33450 Filed 2–12–01; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
February 13, 2001

Part II

Environmental Protection Agency

40 CFR Parts 148, et al.

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Paint Production Wastes; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[SWH–FRL–6940–6]

RIN 2050–AE32

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Paint Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; CERCLA Hazardous Substance Designation and Reportable Quantities; Designation of n-Butyl Alcohol, Ethyl Benzene, Methyl Isobutyl Ketone, Styrene, and Xylenes as Appendix VIII Constituents; Addition of Acrylamide and Styrene to the Treatment Standards of F039; and Designation of Styrene as an Underlying Hazardous Constituent

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to amend the regulations for hazardous waste management under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous certain waste solids and liquids generated from the production of paint. EPA is proposing a concentration-based listing approach for each of these wastes. Under this approach, the identified paint production wastes are hazardous if they contain any of the constituents of concern at concentrations that meet or exceed regulatory levels. Generators must determine whether their wastes are listed hazardous wastes. If their wastes are below regulatory levels for all constituents of concern, then their wastes are nonhazardous. We are also proposing a contingent management option for waste liquids. These wastes would not be subject to the listing if they are stored or treated exclusively in tanks or containers prior to discharge to a publicly owned treatment works or discharged under a Clean Water Act national pollutant discharge elimination system permit. This proposal would also add the toxic constituents n-butyl alcohol, ethyl benzene, methyl isobutyl ketone, styrene, and xylenes found in these identified wastes to the list of constituents that serves as the basis for classifying wastes as hazardous, and to establish treatment standards for the wastes. Due to the uncertainties in our assessment of the management of paint manufacturing waste liquids in surface impoundments, we are also considering an alternative proposal not to list paint manufacturing waste liquids.

If these paint production wastes are listed as hazardous waste, then they will be subject to stringent management and treatment standards under Subtitle C of RCRA. Additionally, this action proposes to designate these wastes as hazardous substances subject to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and to adjust the one pound statutory reportable quantities (RQs) for these substances. Other actions proposed in this notice would add acrylamide and styrene to the treatment standards applicable to multisource leachate and designate styrene as an underlying hazardous constituent. As a result, a single waste code would continue to be applicable to multisource landfill leachates and residues of characteristic wastes would require treatment when styrene is present above the proposed land disposal standards.

DATES: EPA will accept public comments on this proposed rule until April 16, 2001. Comments postmarked after this date will be marked ''late'' and may not be considered. Any person may request a public hearing on this proposal by filing a request with Mr. David Bussard, whose address appears below, by February 27, 2001.

ADDRESSES: If you would like to file a request for a public hearing on this proposal, please submit your request to Mr. David Bussard at: Office of Solid Waste, Hazardous Waste Identification Division (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (703) 308–8880.

If you wish to comment on this proposed rule, you must send an original and two copies of the comments referencing docket number F–2001–PMLP–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Hand deliveries of comments should be made to the RCRA Information Center (RIC) located at Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. You also may submit comments electronically by sending electronic mail through the Internet to: rcradocket@epa.gov. See the beginning of the Supplementary Information section for information on how to submit your comments as well as view public comments and supporting materials.

Please do not submit any confidential business information (CBI) electronically. You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of the rule, contact Ms. Patricia Cohn or Mr. David Carver of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (E-mail addresses and telephone numbers: cohn.patricia@epa.gov (703–308–8675); carver.david@epa.gov (703–308–8603)). For technical information on the CERCLA aspects of this rule, contact Ms. Lynn Beasley, Office of Emergency and Remedial Response, Analytical Operations and Data Quality Center (5204G), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, [E-mail address and telephone number: beasley.lynn@epa.gov (703–603–9086)].

SUPPLEMENTARY INFORMATION:

How Do I Submit Comments to This Proposed Rule?

We are asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). Specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow us to convert the comments into one of the word processing formats used by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. We emphasize that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter.

If you submit comments electronically, identify comments in electronic format with the docket number F–2001–PMLP–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters and any form of encryption.

How Can I View Supporting Documents for This Proposed Rule?

You may view either the paper or electronic form of public comments and supporting materials accompanying today's proposal. You may access the paper copies of these supporting

documents in the RIC (See **ADDRESSES** section for address). The RIC is open from 9 am to 4 pm, Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

You may also view these documents electronically on the Internet: *http://www.epa.gov/epaoswer/hazwaste/id/paint.*

We will keep the official record for this action in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address under **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. We may, however, seek clarification of electronic comments that become garbled in transmission or during conversion to paper form, as discussed above.

Customer Service

How Can I Influence EPA's Thinking on this Proposed Rule?

In developing this proposal, we tried to address the concerns of all our stakeholders. Your comments will help us improve this rule. We invite you to provide views on options we propose, new data, information on how this rule may affect you, or other relevant information. We welcome your views on all aspects of this proposed rule, but we particularly request comments on the items identified at the end of each section. Your comments will be most effective if you follow the suggestions below:

- Include your name, the date, and the docket number with your comments. Remember that your comments must be submitted by the deadline specified in this notice.
- Reference your comments to specific sections of the proposal by using section titles, page numbers of the preamble, or the regulatory citations.
- Clearly label any confidential business information (CBI) submitted as part of your comments.
- Explain your views as clearly as possible and provide a summary of the reasoning you used to arrive at your conclusions as well as examples to illustrate your views where possible.
- Tell us which parts of this proposal you support, as well as those with which you disagree.
- Offer specific alternatives.
- Provide solid technical data to support your views. For example, if you estimate potential costs, explain how you arrived at your estimate.

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I. Overview

A. Who Potentially Will be Affected by This Proposed Rule?

If finalized, this regulation could potentially affect those who generate and manage certain paint production wastes. Landfill owners/operators may also be impacted. A common disposal practice for much of the paint production wastes of concern has been in solid waste landfills. This proposed listing may result in leachate from some of these landfills becoming hazardous under the derived-from rule (described further in Section V.H). However, impacts to these facilities are projected to be negligible under our proposed approach of a Clean Water Act temporary deferral. This action may also affect entities that need to respond to releases of these wastes as CERCLA hazardous substances. These potentially affected entities are described in the Economics Background Document placed in the docket in support of today's proposed rule. A summary is provided in the table below.

SUMMARY OF FACILITIES POTENTIALLY AFFECTED BY EPA'S 2000 PAINT PRODUCTION WASTE LISTING PROPOSAL

Item	SIC code	NAICS code	Industry sector name	Estimated number of U.S. relevant facilities
1	2851	325510	Paint and Coating Manufacturing	972
2	4953	562212	Solid Waste Landfill	35–48

This list of potentially affected entities may not be exhaustive. Our aim is to provide a guide for readers regarding entities likely to be regulated by this action. This action, however, may affect other entities not listed in the table. To determine whether your facility is regulated by this action, you should examine 40 CFR parts 260 and 261 carefully along with the proposed rules amending RCRA that are found at the end of this **Federal Register** notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

B. What Impact May This Proposed Rule Have?

If you are a paint manufacturer and you generate wastes described in this

proposed rule, then you would need to determine if your wastes meet these newly listed hazardous waste codes, if finalized. Your waste would become a listed hazardous waste if it contains any of the constituents of concern at a concentration equal to or greater than the hazardous concentration identified for that constituent (see Tables IV–1 and IV–2). If you determine that your wastes are hazardous under this listing, then the wastes must be stored, treated and disposed in a manner consistent with the RCRA Subtitle C hazardous waste regulations at 40 CFR parts 260–272. If your annual generation of these paint production wastes exceeds 40 metric tons of waste solids and/or 100 metric tons of waste liquids, you must also perform certain routine testing of the affected wastes and keep certain records of these wastes (as described in Section V.E) on-site.

We are proposing that generators must meet the necessary conditions to determine whether or not a waste is hazardous based on the steps described in Section V.C, of today's proposed rule. If you determine that your wastes are hazardous under this listing, then you are also subject to all applicable requirements for hazardous waste generators in 40 part CFR 262. If you were not previously a hazardous waste generator, and you determine you generate this newly-listed hazardous waste; then you must notify the EPA, according to section 3010 of RCRA, that you generate hazardous waste. Following an initial determination whether your wastes are hazardous or nonhazardous under this listing, you would have a continuing obligation to make such a determination at least on an annual basis.

C. Why Does This Proposed Rule Read Differently From Other Listing Rules?

Today's proposed hazardous waste listing determination (or ''listing determination'') preamble and regulations are written in ''readable regulations'' format. The authors tried to use active rather than passive voice, plain language, a question-and-answer format, the pronouns ''we'' for EPA and ''you'' for the owner/generator, as well as other techniques, including an acronym list (see below), to make the information in today's proposed rule easier to read and understand. This new format is part of our efforts towards regulatory reinvention. We believe that this new format will help readers understand the regulations and foster better relationships between EPA and the regulated community.

ACRONYMS

Acronym	Definition
µm	Micrometer
BDAT	Best Demonstrated Available Technology
BFI	Browning-Ferris Industries (now Allied Waste Industries Inc.)
BHP	Biodegradation, hydrolysis and photolysis
BIF	Boiler and Industrial Furnace
BRS	Biennial Reporting System
CAA	Clean Air Act
CalEPA	California Environmental Protection Agency
CARBN	Carbon Absorption
CAS	Chemical Abstract Services
CBI	Confidential Business Information
CERCLA	Comprehensive Environmental Response Compensation and Liability Act
CERCLIS	Comprehensive Environmental Response Compensation and Liability Information System
CESQG	Conditionally Exempt Small Quantity Generator
CFR	Code of Federal Regulations
CHOXD	Chemical or Electrolytic Oxidation
CMBST	Combustion
COC	Constituents of Concern
CSCL	Chemical Stressor Concentration Limit
CSF	Cancer Slope Factor
CWA	Clean Water Act
CWT	Centralized Wastewater Treatment Facility (May also be referred to as a wastewater treatment facility, or WWTF)
EDF	Environmental Defense Fund
EO	Executive Order
EP	Extraction Procedure
EPA	Environmental Protection Agency
EPACMTP	EPA's Composite Model for Leachate Migration with Transformation Products
EPCRA	Emergency Planning and Community Right-To-Know Act
FR	Federal Register
GDP	Gross Domestic Product
GNP	Gross National Product
HAP	Hazardous Air Pollutant
HEAST	Health Effects Assessment Summary Table
HQ	Hazard Quotient
HSWA	Hazardous and Solid Waste Amendments
HWIR	Hazardous Waste Identification Rule
ICR	Information Collection Request
INC	Incineration
IRIS	Integrated Risk Information System
ISCST3	Industrial Source Complex-Short Term
LDR	Land Disposal Restriction
MACT	Maximum Achievable Control Technology
mg/kg	Milligram per kilogram
mg/L	Milligram per liter
MLF	Municipal Landfill
MINTEQ	MINTEQ (model for geochemical equilibria in ground water)

ACRONYMS—Continued

Acronym	Definition
MINTEQA2	MINTEQA2 (model for geochemical equilibria in ground water) Geochemical speciation model; originally a combination of Mineral Equilibrium Model (MINEQL) and the thermodynamic database WATEQ3
MSDS	Material Safety Data Sheet
MSW	Municipal Solid Waste
MT	Metric Ton
NAICS	North American Industrial Classification System
NAPL	Non-Aqueous Phase Liquid
NCV	National Capacity Variance
NESHAP	National Emission Standards for Hazardous Air Pollutants
NPCA	National Paint and Coatings Association
NPDES	National Pollutant Discharge Elimination System
NPL	National Priority List
NRC	National Response Center
NTTAA	National Technology Transfer and Advancement Act
OEM	Original Equipment Manufacturing
OMB	Office of Management and Budget
OSW	Office of Solid Waste
OSWER	Office of Solid Waste and Emergency Response
OSWRO	Off-Site Waste and Recovery Operations
PBT	Persistent, Bioaccumulative and Toxic
POTW	Publicly Owned Treatment Works
ppm	Parts Per Million
PRA	Paperwork Reduction Act
QA	Quality Assurance
QC	Quality Control
RCRA	Resource Conservation and Recovery Act
RFA	Regulatory Flexibility Act
RfC	Reference Concentration
RfD	Reference Dose
RFSA	Regulatory Flexibility Screening Analysis
RIC	RCRA Information Center
RODS	Record of Decision System
RQ	Reportable Quantity
RTK	Right-To-Know
SBA	Small Business Administration
SBREFA	Small Business Regulatory Enforcement Fairness Act
SIC	Standard Industry Code
SOP	Standard Operating Procedure
SPIS	Superfund Public Information System
SW–846	Test Methods for Evaluating Solid Wastes
TC	Toxicity Characteristic
TCLP	Toxicity Characteristic Leaching Procedure
TOC	Total Organic Carbon
TRI	Toxic Release Inventory
TSDF	Treatment, Storage and Disposal facility
TSDR	Toxic Substances and Disease Registry
TSS	Total Suspended Solids
UMRA	Unfunded Mandates Reform Act
USC	United States Code
USLE	Universal Soil Loss Equation
UTS	Universal Treatment Standard
VOC	Volatile Organic Compound
WETOX	Wet Air Oxidation
WMU	Waste Management Unit
WMX	WMX Technologies, Inc.

D. What Are The Statutory Authorities for This Proposed Rule?

These regulations are being proposed under the authority of sections 2002(a), 3001(b), 3001(e)(2), 3004(d)–(m), and 3007(a) of the Solid Waste Disposal Act, 42 U.S.C. 6912(a), 6921(b) and (e)(2), 6924(d)–(m), and 6927(a), as amended, most importantly by the Hazardous and Solid Waste Amendments of 1984 (HSWA). These statutes commonly are referred to as the Resource Conservation and Recovery Act (RCRA), and are codified at Volume 42 of the United States Code (U.S.C.), sections 6901 to 6992(k) (42 U.S.C. 6901–6992(k)).

Section 102(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9602(a) is the authority under which EPA is proposing amendments to 40 CFR part 302.

II. Background

A. How Does EPA Define a Hazardous Waste?

EPA's regulations establish two ways of identifying solid wastes as hazardous under RCRA. A waste may be considered hazardous if it exhibits certain hazardous properties (''characteristics'') or if it is included on a specific list of wastes EPA has determined are hazardous (''listing'' a

waste as hazardous) because it was found to pose substantial present or potential hazards to human health or the environment. EPA's regulations in the Code of Federal Regulations (40 CFR) define four hazardous waste characteristic properties: Ignitability, corrosivity, reactivity, or toxicity (See 40 CFR 261.21–261.24). As a generator, you must determine whether or not a waste exhibits any of these characteristics by testing the waste, or by using your knowledge of the process that produced the waste (see § 262.11(c)). While you are not required to sample your waste, you will be subject to enforcement actions if you are found to be improperly managing materials that are characteristic hazardous waste.

EPA may also conduct a more specific assessment of a waste or category of wastes and ''list'' them if they meet criteria set out in 40 CFR 261.11. As described in § 261.11, we may list a waste as hazardous if it:

—Exhibits any of the characteristics noted above, i.e., ignitability, corrosivity, reactivity, or toxicity (261.11(a)(1));
—Is ''acutely'' hazardous, i.e., if they are fatal to humans or in animal studies at low doses, or otherwise capable of causing or significantly contributing to an increase in serious illness (261.11(a)(2)); or
—Is capable of posing a substantial present or potential hazard to human health or the environment when improperly managed (261.11(a)(3)).

Under the third criterion, at 40 CFR 261.11(a)(3), we may decide to list a waste as hazardous if it contains hazardous constituents identified in 40 CFR part 261, appendix VIII, and if, after considering the factors noted in this section of the regulations, we ''conclude that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.'' We place a chemical on the list of hazardous constituents on Appendix VIII only if scientific studies have shown a chemical has toxic effects on humans or other life forms. When listing a waste, we also add the hazardous constituents that serve as the basis for listing to 40 CFR part 261, appendix VII.

The regulations at 40 CFR 261.31 through 261.33 contain the various hazardous wastes the Agency has listed to date. Section 261.31 lists wastes generated from non-specific sources, known as ''F-wastes,'' and contains wastes that are usually generated by various industries or types of facilities, such as ''wastewater treatment sludges from electroplating operations'' (see code F006). Section 261.32 lists hazardous wastes generated from specific industry sources, known as ''K-wastes,'' such as ''Spent potliners from primary aluminum production'' (see code K088). Section 261.33 contains lists of commercial chemical products and other materials, known as ''P-wastes'' or ''U-wastes,'' that become hazardous wastes when they are discarded or intended to be discarded.

Today's proposed regulations would list certain paint production wastes as K-waste codes under § 261.32. We are also proposing to add constituents that serve as the basis for the proposed listings to Appendix VII as well as to add certain constituents to the list of Hazardous Constituents in Appendix VIII that are not already included.

''Derived-from'' and ''Mixture'' Rules

Residuals from the treatment, storage, or disposal of most listed hazardous wastes are also classified as hazardous wastes based on the ''derived-from'' rule (40 CFR 261.3(c)(2)(i)). For example, ash or other residuals generated from the treatment of a listed waste generally carries the original hazardous waste code and is subject to the hazardous waste regulations. Also, the ''mixture'' rule (40 CFR 261.3(a)(2)(iii) and (iv)) provides that, with certain limited exceptions, any mixture of a listed hazardous waste and a solid waste is itself a RCRA hazardous waste.

Some materials that would otherwise be classified as hazardous wastes under the rules described above are excluded from jurisdiction under RCRA if they are recycled in certain ways. The current definition of solid waste at 40 CFR 261.2 excludes from the definition of solid waste secondary materials that are used directly (*i.e.,* without reclamation) as ingredients in manufacturing processes to make new products, used directly as effective substitutes for commercial products, or returned directly to the original process from which they are generated as a substitute for raw material feedstock. (See 40 CFR 261.2(e).) As discussed in the January 4, 1985, rulemaking that promulgated this regulatory framework, these are activities which, as a general matter, resemble ongoing manufacturing operations more than conventional waste management and so are more appropriately classified as not involving solid wastes. (See 50 FR 637–640).

B. How Does EPA Regulate RCRA Hazardous Wastes?

If a waste exhibits a hazardous characteristic or is listed as a hazardous waste then it is subject to federal requirements under RCRA. These regulations affect persons who generate, transport, treat, store or dispose of such waste. Facilities that must meet hazardous waste management requirements, including the need to obtain permits to operate, commonly are referred to as ''Subtitle C'' facilities. Subtitle C is Congress' original statutory designation for that part of RCRA that directs EPA to issue regulations for hazardous wastes as may be necessary to protect human health or the environment. EPA standards and procedural regulations implementing Subtitle C are found generally at 40 CFR parts 260 through 272.

All RCRA hazardous wastes are also hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as defined in section 101(14)(C) of the CERCLA statute. This applies to wastes listed in §§ 261.31 through 261.33, as well as any wastes that exhibit a RCRA characteristic. Table 302.4 at 40 CFR 302.4 lists CERCLA hazardous substances along with their reportable quantities (RQs). Anyone spilling or releasing a substance at or above the RQ must report the release to the National Response Center, as required in CERCLA Section 103. In addition, Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) requires facilities to report the release of a CERCLA hazardous substance at or above its RQ to State and local authorities. Today's rule proposes to establish RQs for the newly listed wastes.

C. How Does EPA Regulate Solid Wastes That Are Not RCRA Hazardous Wastes?

If your waste is a solid waste but is not, or is determined not to be a listed and/or characteristic hazardous waste, then you may dispose these solid wastes at Subtitle D facilities. These facilities are approved by state and local governments and generally impose less stringent requirements on management of wastes. Subtitle D is the statutory designation for that part of RCRA that deals with disposal of solid waste. EPA regulations affecting Subtitle D facilities are found at 40 CFR parts 240 thru 247, and 255 thru 258. Regulations for Subtitle D landfills that accept municipal waste (''municipal solid waste landfills'') are in 40 CFR part 258.

D. Overview of the Hazardous Waste Listing Determination Process for Paint Production Wastes

1. Suspension of Previous Listings

Under the Resource Conservation and Recovery Act (RCRA) of 1976, Congress directed EPA to establish a framework for RCRA's Subtitle C hazardous waste program. Congress also required EPA to propose and write timely rules identifying wastes as hazardous under Subtitle C. EPA responded by proposing Subtitle C regulations on December 12, 1978 (43 FR 58957) which established a framework for the Subtitle C program. At the same time, EPA also proposed to list wastes—including four paint production waste streams from specific (paint production) sources and two paint production waste streams from non-specific (paint application) sources—as hazardous. On July 16, 1980, EPA promulgated an interim final rule (45 FR 47832) that designated four paint production waste streams from specific sources as hazardous waste under 40 CFR 261.32:

- Solvent cleaning wastes from equipment and tank cleaning operations (K078),
- Water/caustic cleaning wastes from equipment and tank cleaning operations (K079),
- Wastewater treatment sludge (K081), and
- Emission control dust or sludge (K082).

Commenters to this rule argued that these listings were overly broad. EPA consequently re-examined the data and initial analysis on these paint production waste streams and determined that further study of these wastes was necessary before a final listing could be promulgated. On January 16, 1981, this interim final rule—identifying and listing these paint production waste streams as hazardous—was temporarily suspended (48 FR 4614).

2. Consent Decree Schedule for This Proposal

The 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA require EPA to make listing determinations for paint production wastes (see RCRA section 3001(e)(2)). In 1989, the Environmental Defense Fund (EDF) filed a lawsuit to enforce the statutory deadlines for listing decisions in RCRA section 3001(e)(2). (*EDF* v. *Browner*, D.D.C. Civ. No. 89–0598). To resolve most of the issues in the case, EDF and EPA entered into a consent decree, which has been amended several times to revise deadlines for EPA action. Paragraph 1.d (as amended) of the consent decree addresses the paint production industry:

> EPA shall promulgate a final listing determination for paint production wastes on or before March 30, 2002. This listing determination shall be proposed for public comment on or before January 28, 2001. This listing determination shall include the following wastes: solvent cleaning wastes (K078), water/caustic cleaning wastes (K079), wastewater treatment sludge (K081), and emission control dust or sludge (K082) for which listings were suspended on January 16, 1981 (46 FR 4614), and off-specification production wastes.

Today's proposal satisfies EPA's duty under paragraph 1.d to propose determinations for the specified paint production wastes.

E. Existing Regulations That Apply to This Industry

RCRA authorizes EPA to evaluate industry waste management practices and, if necessary, regulate how wastes are handled to ensure that present or potential hazards are not posed to human health and the environment. In addition to RCRA, the Clean Water Act (CWA) and Clean Air Act (CAA) provide EPA with the statutory authority to evaluate industry practices and, if necessary, regulate industry releases of pollutants to environmental media such as water and air.

Currently, there are no regulatory requirements under RCRA that specifically—identify paint production waste streams as listed hazardous waste. Paint production waste streams may, however, carry hazardous waste listing and/or characteristic codes if they are generated from the use of certain common organic solvents (spent solvent wastes F001 through F005) or if they exhibit a hazardous waste characteristic (ignitability—D001, corrosivity—D002, reactivity—D003, toxicity—D004—D043). EPA is not soliciting comment on these existing hazardous waste listings and does not intend to respond to such comments if received. As well, paint production wastes subject to today's proposal remain subject to current hazardous waste listings or characteristics that render them hazardous.

Regulatory requirements under the CWA (40 CFR part 446) specify effluent guidelines implemented through national pollutant discharge elimination system (NPDES) permits for certain paint production wastes that are discharged to navigable waters. These regulations apply to paint production wastes that originate from the production of oil-based paint where tank cleaning is performed using solvents. In addition, manufacturers who discharge wastewaters generated from paint production to a publicly owned treatment works (POTW) may be required to comply with general pretreatment requirements (40 CFR part 403) as established by the POTW. Finally, some paint manufacturers send their wastewaters to privately-owned centralized wastewater treatment facilities (CWTs) that are operated under NPDES permits. The Agency recently promulgated effluent guidelines for these facilities at 40 CFR part 437.

Under the CAA there are two types of regulatory requirements that may apply specifically to paint production wastes: National volatile organic compound (VOC) emission standards and national emission standards for hazardous air pollutants (NESHAP). VOC emission standards—which aim to reduce VOC emissions and in turn reduce ozone levels—exist for architectural coatings (40 CFR part 59, subpart D; 63 FR 48848, September 11, 1998) and automobile refinish coatings (40 CFR part 59, subpart B; 63 FR 48806, September 11, 1998). These standards specify VOC levels for categories of architectural and automobile refinish coatings.

Subpart DD in 40 CFR part 63, sets NESHAPs from off-site waste and recovery operations (OSWRO). These standards, in part, limit air releases from off-site wastewater treatment facilities (CWTs) (July 1, 1996, 61 FR 34140). Furthermore, EPA is planning to propose a MACT (Maximum Achievable Control Technology) standard for paint manufacturers (Miscellaneous Organic Chemical and Coatings Manufacturing) that would regulate hazardous air pollutant (HAP) emissions from process vents, storage tanks, transfer operations, equipment leaks, and wastewaters.[1] This would apply to wastewaters managed on-site and also if sent off-site for treatment.

F. What Industries and Wastes Are Covered in This Proposed Rule?

1. Scope of Consent Decree

Today's proposed rule applies to paint and coatings manufacturers generally categorized under subcodes 28511, 28512, and 28513 of Standard Industrial Code (SIC) 2851, or North American Industry Classification System (NAICS) 325510 (subcodes -1, -4, and -7). This includes, but is not limited to, entities who manufacture:

[1] These regulations would apply to coatings manufacturing facilities that are a major source and use, produce, or make a HAP. A major source of a HAP is located within a contiguous area and under common control and has the potential to emit greater than 9.1 Mg/yr (25 tons/yr) of any combination of HAP or 10 tons/yr of a single HAP.

paints (including undercoats, primers, finishes, sealers, enamels, refinish paints, and tinting bases), stains, varnishes (including lacquers), product finishes for original equipment manufacturing and industrial application, and coatings (including special purpose coatings and powder coatings). Products produced by this industry that are included within the scope of this proposed rule are referred to as ''paints'' and/or ''coatings.''

Today's proposal does not apply to miscellaneous allied products (paint and varnish removers, thinners for lacquers and other solvent-based paint products, pigment dispersions or putty) included under SIC subcode 28515 (NAICS 325510A) or artist paint, which is classified under SIC 3952 (NAICS 339942).

The waste streams included within the scope of today's proposal are the following paint production wastes generated by paint manufacturers: (1) Solvent cleaning wastes as waste liquids and solids generated from equipment and tank cleaning operations; (2) water and/or caustic cleaning wastes as waste liquids and solids generated from equipment and tank cleaning operations; (3) wastewater treatment sludge as waste solids generated in on-site or captive wastewater treatment processes solely or primarily for treating paint production waste liquids; (4) emission control dust or sludge as waste solids collected in a facility's particulate emission control devices such as baghouses; and (5) off-specification production wastes as waste solids.

EPA bases many of its decisions as to the scope of the industries and wastes covered in this proposal on the *EDF* v. *Browner* consent decree. Paragraph 1.d of the consent decree states:

> *Paint production wastes*—EPA shall promulgate a final listing determination for paint production wastes on or before March 30, 2002. This listing determination shall be proposed for comment on or before January 28, 2001. This listing determination shall include the following wastes: solvent cleaning wastes (K078), water/caustic cleaning wastes (K079), wastewater treatment sludge (K081), and emission control dust or sludge (K082) *for which listings were suspended on January 16, 1981 (46 FR 4614)*, and off-specification production wastes. (Emphasis added)

For solvent cleaning wastes, water/caustic cleaning wastes, wastewater treatment sludge and emission control sludge or dust, we believe that the decree requires us to address only those industries and wastes included in the paint production wastes listing that the Agency suspended on January 16, 1981. After reviewing the original rulemaking record for the suspended interim final rule, we have determined that while EPA did initially look at the entire paint and coatings SIC classification, which included miscellaneous allied products, we ultimately narrowed the scope of the suspended paint listings to exclude this category. Therefore, manufacturers of allied products and allied products production wastes are not covered by the decree. Moreover, nothing in the 1980 rulemaking record suggests that artist materials were considered in this earlier listing development work. Therefore, EPA does not interpret the decree to require assessment of solvent cleaning wastes, water/caustic cleaning wastes, wastewater treatment sludge, and emission control sludge or dust from the production of artist paint. (For more information on how EPA determined the scope of the suspended paint listings, refer to the accompanying Listing Background Document.)

Concerning ''off-specification production waste,'' we believe that the most straightforward reading of the consent decree is that this waste stream, although not part of the suspended listings, has the same scope as the other enumerated waste streams. In other words, the decree does not require us to address off-specification allied products and artist paints. Nothing in the decree suggests that either party intended the off-specification production waste stream to apply more narrowly or more broadly than the other waste streams. Thus, EPA has assessed only off-specification paint production wastes from subcodes 28511, 28512, and 28513 of Standard Industrial Code (SIC) 2851.

EPA, however, interprets the decree to exclude off-specification paint products that have been shipped out to retailers or paint users. EPA believes that these downstream entities do not engage in paint production. Consequently, EPA has not evaluated off-specification paint which a downstream entity decides to discard or send back to the manufacturer. Moreover, as explained below, EPA thinks that downstream entities can presume that unused paint products returned to a paint production facility will be legitimately reused and, thus, will not be solid wastes, even if they exhibit a hazardous waste characteristic.

2. Scope of Listing: Off-Specification Products

EPA is proposing to include within the category of off-specification paints all products which a paint manufacturer decides not to use—whether or not the paint product meets applicable product specifications. Not all of these unused products literally fail to meet product specifications; paint producers cite a variety of reasons for deciding not to sell them as originally intended. EPA believes that any unused products, whatever the reason they are unused, could present similar risks. Moreover, facilities would find it cumbersome to distinguish between off-specification products and other unused products.

EPA is proposing not to go beyond the scope of the consent decree to include within the listing off-specification paint products which retailers or users decide to discard or return to manufacturers. However, EPA is proposing to go beyond consent decree requirements to include within the scope of today's proposed listing returned, unused products once a manufacturer obtains possession or control of them. EPA believes that ''returned'' unused products could pose risks similar to those posed by unused products that never go off-site. And, as discussed above, facilities would find it cumbersome to distinguish between returned products and ''never sent'' products. EPA refers to all of these unused products that will not be sold for their original, intended use as ''off-specification'' paint products.

3. Recycling Issues

EPA notes that off-specification paint production wastes can be recycled in ways that will not be regulated as hazardous waste management. Under current regulations defining ''solid wastes,'' unused paint reused as a legitimate ingredient in the manufacture of other paint is not considered a ''waste'' and thus will not be subject to the hazardous waste regulations. EPA notes that paint manufacturers commonly reuse unused products to make new paints. EPA also understands that paint formulations are fairly exacting, making it unlikely that a manufacturer could successfully rework paint containing significant quantities of constituents that are not useful paint ingredients. Typically, this type of reuse of a commercial product (when legitimate) is not regulated as waste management, even if it involves reclamation. See 40 CFR 261.2 [2] In addition, relatively small quantities are sold for ''lower-grade'' uses; these materials are still paint products, and no aspect of this activity is regulated under RCRA Subtitle C.

EPA wants to clarify the effect of today's proposed listing on ''take-back''

[2] See also: Letter from Sylvia K. Lowrance to Mark Schultz, May 16, 1991. This letter says that returned pharmaceutical products are not considered solid wastes until a decision is made to discard them, because use/reuse is generally a viable option.

programs in which retailers or customers return unused paint because it does not meet the customer's specifications or because it is unusable for some other reason. EPA believes, based on what it knows of the industry, that a retailer or customer returning unused paint to a paint manufacturer can presume that the paint will be legitimately used as an ingredient and that, therefore, the paint being returned is not a hazardous waste even if it exhibits a hazardous waste characteristic. EPA understands that paint manufacturers will typically take such returned paint and use it as a legitimate ingredient in the manufacture of another paint product. The retailer or user will be entitled to rely on this interpretation exempting returned paint even if the manufacturer ultimately decides to discard the unused paint rather than reuse it. EPA has previously taken the position that retailers or users of pharmaceutical products returning unused products to manufacturers are not managing wastes [3]. However, should the paint production facility determine it cannot or will not use the returned paint as an ingredient, we are proposing that the paint would then become an off-specification paint product waste that would need to be evaluated against the concentrations proposed in today's rulemaking, as well as the hazardous waste characteristics.

G. Description of The Paint and Coatings Industry

Paint and coatings manufacturers are concentrated near large metropolitan areas, with the majority of facilities located on the East Coast, and in California, Texas and the Midwest. We estimate that there are 972 paint and coatings manufacturing facilities operated in the United States by about 780 different companies (a few larger companies operate several facilities). For more information on how we estimated this universe, refer to Section II.H. Of this universe, we estimate that about 95 percent of all these companies meet the Small Business Administration definition of a small business (total company employment of fewer than 500 people, at the parent level, if a company is a subsidiary). We estimate that around 600 facilities are generating wastes that fall within the scope of this rulemaking.

The paint and coatings industry is classified by the type of paint product manufactured. Products are categorized into three main groups according to end use by the SIC classification as architectural coatings, original equipment manufacturing (OEM) product finishes, and special purpose coatings. Architectural coatings, also referred to as trade sales paints, include exterior and interior house paints, stains, varnishes, undercoats, primers, and sealers. OEM product finishes are custom formulated for application to products during the manufacturing process. This includes coatings applied to automobiles, appliances, machinery and equipment, toys and sporting goods, wood furniture and fixtures, coil coatings, electrical insulation, factory-finished wood, metal containers, paper, film and foil, and non-automotive transportation. Special purpose paints are formulated for specific applications or extreme environmental conditions (fumes, chemicals, and temperature) and include: high-performance maintenance coatings (used in refineries, public utilities, bridges, etc.); automotive refinishing; highway traffic markings; aerosol paints; and marine coatings.

Paint Production. Paints and coatings are formulated to protect and decorate surfaces as well as enhance desired surface properties such as electrical conductivity and corrosion protection. Inorganic and organic chemicals comprise raw materials—solvents, resins (or ''binders''), pigments, and additives—that are mixed in a batch process to make solvent or water-based paint according to desired end-use specifications. Batches of paint, which may range in size from 10 to 10,000 gallons, are blended in stationary and portable equipment such as mixers, blenders, sand mills, and tanks.

Paint Production Waste Generation and Management. Process equipment is cleaned regularly to avoid product contamination and to restore operational efficiency. The equipment is also cleaned during manufacturing shut downs and when a significant change in a production line occurs. Because paint is a mixture of chemicals that does not involve chemical reactions, the make-up of paint production wastes reflects chemicals used in batch production and any ancillary chemicals such as those used in cleaning process equipment. Depending on the type of paint manufactured, process equipment may be cleaned with either solvent, water, or aqueous caustic washes. These liquid cleaning wastes consist of paint solids and sludges which may contain pigments, partially or completely cured resins, and additives. Solvent cleaning wastes, as well as water and/or caustic cleaning wastes are defined by the type of cleaning reagent used, not by the material that is being removed through the cleaning process. For example, you can generate a solvent cleaning waste if you clean a wastewater tank with a solvent (or blend of solvent).

Paint manufacturing facilities may also generate waste solids and liquids included within the scope of this proposed rule when (1) emission control systems are emptied, (2) wastewaters are treated and (3) off-specification product is discarded. Airborne material is generated when dry materials, such as pigments, are loaded into processing equipment. Air hoods and exhaust fans help control the level of airborne particulate material released into the paint production areas. Material is collected in emission control systems such as baghouses. Pigments comprise a large fraction of the dry materials collected in emission control systems. Other raw materials, including additives (such as fillers) and solvents, may also be collected in emission control systems.

Water-based wastewaters are primarily generated when process equipment is cleaned. Additional sources include floor washdown and spill cleanup. The most common treatment for these wastewaters is physical-chemical. This usually involves chemical addition and gravity settling of suspended solids which generates a liquid and sludge.

As discussed above in Section II.F, ''off-specification'' paint products subject to this listing determination include any unused paint products which a paint manufacturer decides to handle in a way that is regulated as waste management. A paint may be considered off-specification for a variety of reasons. For example, it may not meet the original design specifications; it may be replaced by a new superior production; or, the product's shelf life expires. As discussed earlier, off-specification paint products may be reworked into saleable materials or discarded. Off-specification product that is discarded by a paint manufacturer is subject to this listing.

Paint manufacturers may generate some or all of these wastes. Waste generation is a function, in part, of volume and type of paint produced, degree of automation, amount of recycling, and age of facility. Treating, handling, and disposing of these wastes are costs associated with paint production activities. Paint manufacturers strive to reduce and/or eliminate waste produced which in turn reduces overall costs and improves profitability and competitiveness.

[3] Letter from David Bussard to N.G. Kraul, February 23, 1993. This letter says that off-specification paint is a non-listed commercial product and not a solid waste when reclaimed.

H. What Information Did EPA Collect and Use?

Our primary sources of data to support this proposed listing determination are a questionnaire (or ''survey'') of the paint and coatings manufacturing industry and existing literature. We conducted a survey under authority of RCRA section 3007, 42 U.S.C. 6927.[4] As part of the survey development process, we went on ten site visits to paint manufacturing facilities throughout the country.

Please note that we did not sample waste streams generated by the paint and coatings industry to support this proposed listing determination. As discussed earlier, there are about 1000 paint manufacturing facilities in the U.S. paint and coatings industry. These facilities combine raw materials (chosen from a potential universe of several thousand constituents) in batch processes to manufacture products that meet market demands for a wide variety of architectural, original equipment manufacture and product coatings, and special purpose needs. Waste streams generated at a facility (the same or different facility) may vary significantly because the type of product manufactured, as well as raw materials used, vary significantly. As a result, we did not attempt to sample paint production wastes described in this proposal because we concluded it would be impractical to conduct a data collection effort that would account for the wide variety of individual paint products produced and the potential variability in the waste characteristics. Gathering sufficient samples to evaluate all potential paint production wastes would require a large commitment of scarce Agency resources that would have been beyond the reasonable scope of this rulemaking. In addition, an advantage of the concentration-based listing approach that we have used in this proposal is that it does not rely on extensive waste sampling. Instead, we are relying on publically available sources of information as well as data collected from survey responses to characterize the constituents likely to be present and the chemical and physical properties of paint manufacturing wastes.

1. Site Visits

To develop a better understanding of industry practices and as a basis for developing the industry survey, the Agency conducted site visits at ten paint manufacturing plants located throughout the country. When selecting sites, we considered: plant production size, type of manufacturing process, Toxic Release Inventory (or ''TRI'') waste release information, and plant location. The information we obtained from these visits (other than that for which a Confidential Business Information (CBI) claim has been made and sustained) is available for public review in the docket for this rulemaking. (For more information about CBI protection, please refer to 40 CFR part 2 subpart B.)

In particular, we collected information on: (1) Types of production and volume, (2) waste management units used, (3) how each residual was managed (as hazardous or not), (4) evidence of off-spec product storage and tracking system, (5) volume of each residual generated and form and how each is stored on-site, (6) management practices for each residual for both on-site and off-site (POTWs, tanks), (7) types of constituents used at plant, (8) reuse of solvent/washwater (e.g., washwater used as ingredient in next batch), (9) pollution prevention and waste minimization practices, (10) presence or absence of solvent recovery stills on-site, (11) presence or absence of any closed loop recycling practices, (12) any appearance of unsafe operating practices or disposal practices by facility, and (13) housekeeping practices on plant floor relative to waste generation and management.

We used information collected at these on-site visits combined with additional information provided by industry representatives to develop a RCRA 3007 survey. For example, we were able to include more appropriate questions on waste management practices and to distinguish wastes that are recycled more clearly. This survey requests information on waste generation and management practices.

2. Database of Paint Manufacturing Information From Published Sources

We also created an electronic Database of Paint Manufacturing Information from Published Sources that is available in the docket. The database consists of three modules. The Raw Materials Module contains information on different categories of raw materials that are combined to make paints. The Paint Formulations Module contains information on the concentrations of different raw materials in selected paint formulations. The Bibliography of Documents Module lists the published reference materials which were used as sources for other modules in the database. These sources include technical texts, journal articles, EPA and other government studies, and publications from paint industry trade organizations.

3. The RCRA Section 3007 Survey

a. *Overview*. The purpose of the survey was to gather information about nonhazardous and hazardous waste generation and management practices in the U.S. paint and coatings manufacturing industry. Specifically, we requested information on the five waste streams of concern (as outlined in the Consent Decree obligations, See Section II.D.2), waste characteristics, and waste management practices.

In addition to determining the content of the survey, we also evaluated whether it was necessary to conduct a census of the industry in order to accurately depict this industry's current waste generation and management practices. Due to the size of the paint manufacturing industry, and in consideration of our time and resource constraints, we could not conduct a full census of all the facilities in the industry. Therefore, we surveyed a sample of the universe rather than conduct a full census. Random sampling is a widely used statistical approach to collecting representative data from a large population. To ensure that this survey would provide the best overall coverage for various industry subsets and identify all significant waste management practices throughout the industry, we used accepted statistical sampling methods to achieve a 90% probability or confidence level that our survey would find a waste management activity utilized by at least one in 20 paint manufacturing facilities within the various categories of generators we identified via our literature search (discussed below). In other words, we determined a sample size such that it would be large enough to ensure a high certainty (90% likelihood) of identifying any waste management practices with more than 5% chance of occurrence. Using a statistical stratified random-sampling scheme[5] designed to represent

[4] See **Federal Register** notices 4 FR 46375 (August 25, 1999) and 64 FR 71135 (December 20, 1999) announcing EPA's data collection request submitted to the Office of Management and Budget (OMB). A copy of the questionnaire is available in the public docket for today's proposed rule. This information collection request was approved by the OMB, Clearance Number 2050–0168 (expiration date: June 30, 2001).

[5] Stratified random sampling is a statistical procedure that first dividends the sampling population into subpopulations or strata with respect to several characteristics such that within the individual strata there is as much homogeneity as possible, and then selects samples randomly from the individual strata. This procedure improves generalizations about the whole population and, if

Continued

paint production types, sales volumes and TRI reporting status, we selected sufficient paint manufacturing facilities from an industry database developed by Dun & Bradstreet, a company of The Dun & Bradstreet Corporation, 2000. We believe this sampling survey adequately covered the industry while reducing the burden imposed by the survey on the industry and reducing the time and money spent by the government in performing the survey.

Prior to finalizing the questionnaire, we conducted a pilot test by sending the questionnaire to three paint manufacturing facilities which were not included in the survey and modified the questionnaire based on their comments. Further, in order to assist the surveyed facilities in understanding and responding to the questionnaire, we established toll-free telephone and e-mail help lines, returned and answered their calls or messages expeditiously, and even helped some complete the questionnaire over the telephone. Note that, under RCRA section 3007, the surveyed facilities are required to provide accurate information and certify under penalty of law. However, to ensure accuracy and completeness, we conducted a quality assurance review of the information and data provided in the questionnaire responses, such as identifying data entry errors, missing data, and internal inconsistencies between answers. The review of each facility's response resulted in follow-up telephone calls and/or letters to some facilities seeking clarifications, corrections, and additional/missing data where needed. We entered data from the questionnaire responses into a database known as the Paint Residual Master Database, and conducted additional quality assurance reviews on the database. Hard copies of the questionnaire responses and a CD–ROM copy of the response database are available in the public docket for review.

We compiled and analyzed these data to develop a general assessment of the paint industry's waste generation and management practices. We also used these data for our risk assessment, economic analysis of the potential impacts of hazardous waste regulation, and Land Disposal Restrictions (LDR) and treatment and management capacity analyses.

b. *Structuring The Survey to Capture All The Wastes of Concern.* As indicated previously, the consent decree obligations require the Agency to make hazardous waste listing determinations on five types of paint production wastes. In the questionnaire, we classified these five waste streams into 20 specific residuals for more detailed waste characterization. These 20 residuals, including ten hazardous and ten nonhazardous under current Federal regulations, encompass liquid residual from solvent cleaning, sludge residual from solvent cleaning, liquid residual from wash water, sludge residual from wash water, liquid residual from caustic wash water, sludge residual from caustic wash water, sludges from wastewater treatment, emission control dust, emission control sludge, and off-specification product. As discussed later in Sections III and IV, we eventually used the detailed waste characterization information from the survey to divide the paint production waste streams of concern into waste solids and waste liquids for today's proposed listing.

c. *Identifying The Universe of Paint Manufacturing Facilities.* Initially, using a variety of industrial and business data sources described in the listing background document, we estimated that there are approximately one thousand paint manufacturing facilities of interest in the United States. We found no single, comprehensive listing of all paint manufacturing facilities. However, we identified the 1998–99 Dun & Bradstreet database as the data source that would provide the most thorough listing of paint manufacturers in the United States that was available in electronic format. We used the Dun & Bradstreet database to develop a sampling population and to stratify the sampling population into categories based on paint types and sales volumes. We also looked at the American Business Directories List of paint and allied product manufacturers and the 1999 Paint Red Book published by Cygnus Publishing, but found that they were less suitable to our needs for sampling stratification purposes. We found that there was insufficient information in the latter two databases for us to distinguish the types of paint production by facilities and whether some facilities were clearly out of scope and classify them into our desired paint production categories (architectural, OEM, etc.). The Dun & Bradstreet database includes a well defined and easily understandable breakdown of the various paint manufacturing types we used to classify them into OEM and architectural related paint categories, and eliminate those apparently of no interest to this listing determination. Specifically, each entry in the Dun & Bradstreet database is identified by an 8-digit code, with the first four being the same as SIC's and the next four proprietary to Dun & Bradstreet that represent the classifications of the facilities. The coding system used in the Dun & Bradstreet database provided the level of detail necessary to more accurately divide the paint industry into the necessary strata for our use.

d. *Constructing a Stratified Random Sample.* We stratified paint manufacturing facilities into various categories for this sampling survey because we expected we might find differences in waste generation and management practices among various types of paint producers (architectural, OEM, etc.) and by sampling the various categories we would be more likely to identify the full range of management practices. We also believed that larger facilities (with higher sales volumes) conduct more waste management activities, and smaller facilities (with lower sales volumes) tend to have more recycling or reuse efforts in order to compete in business. Furthermore, manufacturing facilities subject to the Toxic Release Inventory (TRI) [6] reporting are required to report annual releases of toxic chemicals to waste management units and environmental media. As such, we were particularly interested in SIC 2851 paint manufacturers that are listed under TRI because they would also likely provide more information on waste constituents and management practices of concern to this listing determination. Therefore, we stratified the facilities based on three categorization criteria: Paint types, sales volumes, and TRI status, as elaborated below.

In the Dun & Bradstreet database, we found a total of 1,764 facility entries identified under SIC 2851. We removed those entries that are either apparent non-paint manufacturers, or entries we determined that are outside of the scope of this listing determination, or entries we found impossible to identify for stratification purposes. In the end, we adopted the remaining 884 facilities as the sampling population for this survey.

Next, we stratified the 884 potential paint manufacturing facilities into 12 categories, based on the three categorization criteria discussed above: paint types; sales volumes (less than

properly executed, generally leads to a higher degree edition, Prentice-Hall, Inc., 1967.

[6] The Toxic Release Inventory (TRI) of routine and accidental releases of toxic chemicals to the environment reported by manufacturing facilities, established per Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986. Facilities conducting the specified manufacturing operations are required to report on releases of certain toxic chemicals into the air, water, and land provided certain conditions (having ten or more full-time employees, and manufacturing or processes over 25,000 pounds of the designated chemicals, etc.) are met.

five million dollars, five to twenty million dollars, and greater than twenty million dollars, based on the Census Bureau's figures); and TRI status (whether the facility reported under TRI in 1997). These 12 categories comprise large, medium, and small facilities of the following combinations: Architectural-related production and on the TRI list; OEM-related production and on the TRI list; architectural-related production and not on the TRI list; OEM-related production and not on the TRI list. Also note that three categories contained no facilities: medium architectural-related paint production and on the TRI list, large OEM-related paint production and on the TRI list, and medium OEM-related paint production and on the TRI list.

To select a sample from the 884 sampling population for distributing the questionnaire, we developed a stratified, statistical random-sampling scheme based on the above stratification process and using the hypergeometric probability formula described in Steel and Torrie,[7] such that the sample size would represent a 90% probability of capturing a waste management practice conducted by at least one in 20 facilities (discussed above). Under these criteria, higher percentages of facilities were selected in the medium and large facility categories. All selected facilities were then randomly chosen within the various categories to avoid bias when sending questionnaires to the surveyed facilities. This sampling approach reduced the probability of including known non-paint manufacturers or manufacturers not of interest to this rulemaking in the survey, and increased the chance of capturing sufficient waste management activities. Otherwise, more of the small facilities would have been surveyed, but large manufacturing facilities and TRI generators which would likely provide more waste management information could have been left out.

We developed a statistical weight for each category of surveyed facilities to extrapolate from those facilities we actually surveyed to the larger sampling population of 884 facilities. The weight for each surveyed facility in a category represents its relationship to the total number of facilities in the category. For example, we surveyed 28 facilities from a category of 34 facilities; 63 facilities from a category of 255 facilities; 13 facilities from a category of 99 facilities, etc. As a consequence, each of the 28 facilities sampled from the category of 34 facilities represents 1.2143 facilities (34 ÷ 28 = 1.2143); each of the 63 facilities sampled from the category of 255 represents 4.0476 facilities (255 ÷ 63 = 4.0476); and each of the 13 facilities sampled from the category of 99 represents 7.6154 facilities (99 ÷ 13 = 7.6154), etc. These numbers (1.2143, 4.0476, 7.6154, etc.) are the statistical weighting values (or weights) to be applied to each facility in each of the 12 categories for analysis of the collected data (such as waste quantities). For a detailed description of our statistical methodology and stratification process, see ''Supporting Statement—Information Collection Request for Paint Manufacturing Industry Waste Survey, Part B'' which was submitted to the OMB as part of the ICR for review and approval, and the listing background document available in the public docket for this proposed rule.

e. *Conducting The Survey and Analyzing The Results.* Using this stratified random-sampling scheme, we distributed the questionnaires in February and March of 2000 to a total of 299 facilities out of the sampling population of 884 from the Dun & Bradstreet database that we identified as the potentially impacted paint manufacturing facilities in the United States.

Of the 299 questionnaires we distributed, 292 facilities responded to the questionnaires. We found that in 1998, 187 of the survey respondents manufactured paint products of interest to this listing determination. Thirty six of these 187 facilities identified themselves as paint manufacturers, but in 1998 did not generate or dispose of any of the waste residuals within the scope of the questionnaire because they recycled or reused all paint residuals as feedstock in their manufacturing processes.[8] The other 151 manufacturing facilities generated one or more of the waste residuals of concern. They provided information on their waste generation and management practices. Most of these 151 manufacturing facilities also reused their waste residuals on-site to some extent, either as feedstock in the paint production or as an ongoing cleaning solution. The remaining respondents identified themselves as either a paint sales agent, a non-paint manufacturer, a non-paint manufacturer until after 1998, no longer a paint manufacturer, or a paint-related manufacturer not under the scope of the questionnaire. Table II.H.-1 provides a summary of the number of potential paint manufacturing facilities selected from the Dun & Bradstreet database, the number of facilities surveyed, the number of facilities responded, and the number of paint manufacturing facilities of interest found, in each category of facilities.

TABLE II.H.–1.—SUMMARY OF THE NUMBERS OF POTENTIAL PAINT MANUFACTURING FACILITIES SELECTED, SURVEYED, RESPONDED AND PAINT MANUFACTURING FACILITIES FOUND

Facility category	Number of selected Dun & Bradstreet facilities in category	Number of randomly sampled facilities in category	Number of survey respondents in category	Number of within-scope paint manufacturers found in category
Large, 2851–01, and TRI	2	2	2	2
Medium, 2851–01, and TRI	0	0	0	0
Small, 2851–01, and TRI	6	6	6	6
Large, 2851–01, and non-TRI	34	28	28	17
Medium, 2851–01, and non-TRI	62	48	47	42
Small, 2851–01, and non-TRI	379	77	75	44
Large, 2851–02, and TRI	0	0	0	0
Medium, 2851–02, and TRI	0	0	0	0

[7] Steel, Robert G.D. and James H. Torrie, ''Principles and Procedures of Statistics: A Biometrical Approach,'' 1980, Second Edition, McGraw-Hill, Inc.

[8] As stated in the questionnaire instructions, facilities were not required to report on any of the residuals that are used directly without reclamation as ingredients in manufacturing processes to make new products; or used directly as effective substitutes for commercial products; or returned directly to the original process from which they are generated as a substitute for raw feed stock. These residuals are excluded from the definition of solid waste. See 40 CFR 261.2.

TABLE II.H.–1.—SUMMARY OF THE NUMBERS OF POTENTIAL PAINT MANUFACTURING FACILITIES SELECTED, SURVEYED, RESPONDED AND PAINT MANUFACTURING FACILITIES FOUND—Continued

Facility category	Number of selected Dun & Bradstreet facilities in category	Number of randomly sampled facilities in category	Number of survey respondents in category	Number of within-scope paint manufacturers found in category
Small, 2851–02, and TRI	7	7	7	7
Large, 2851–02, and non-TRI	23	22	22	14
Medium, 2851–02, and non-TRI	47	34	34	24
Small, 2851–02, and non-TRI	324	75	71	31
Total number of facilities	884	299	292	187

We believe the Dun & Bradstreet database properly represents the paint manufacturing universe (notwithstanding the database inevitably includes some out-of-scope operations also listed under SIC 2851). We used sound, widely accepted statistical methods to construct our stratified random-sample covering the variety of paint manufacturing types, paint production wastes, and waste management practices of interest to this listing determination. Therefore, we believe the survey results are representative of the paint manufacturing facilities in the sampling population as well as the universe of paint manufacturers of interest. Furthermore, based on our sample quality review, data analysis, and intensive follow-up with survey respondents, we believe that the data collected from the 187 survey respondents are valid and reliable. Nevertheless, we specifically request data with which to evaluate our assumption that the Dun & Bradstreet database properly represents the paint manufacturing universe, as well as comments on our approach to sampling and extrapolation of sampling results.

We used survey data in three forms: (1) Direct survey responses representing only the surveyed population; (2) weighted data to extrapolate to the sampling population; and (3) data extrapolated to the universe of paint manufacturing.

We used survey responses directly when data extrapolation to the sampling population or the paint universe would not be necessary, such as the patterns of waste management practices (see Section III.D).

As previously discussed, we derived independent weighting values corresponding to the number of facilities represented by each surveyed facility in each category. If the total quantities of a certain residual generated by Category X facilities with a weight of 3.629 were 2,000 tons and by Category Y facilities with a weight of 8.8571 were 1,000 tons, and if facilities in the other categories did not report any, then the combined residual quantities generated by the entire sampling population of 884 can be calculated as 2,000 tons × 3.629 + 1,000 tons × 8.8571 = 16,115 tons. We used weighted waste quantities or volumes to represent the waste volumes sent from each facility in the sampling population to a particular management practice for input to our national risk modeling analysis. See discussions in Sections III.D and E.

Overall, 64% (*i.e.,* 187 ÷ 292) of the 292 respondents are paint manufacturing facilities of interest to this rulemaking. Proportionally, there should be 566 paint manufacturing facilities in the sampling population of 884 (from the Dun & Bradstreet database). As explained earlier, because there is no comprehensive, single listing of all paint manufacturing facilities, we relied on a number of data sources to estimate that there are 972 paint manufacturers. This estimate of 972 paint manufacturers in the universe was derived from the total number of paint manufacturing facilities of interest (187) found from the survey, by extrapolating through the percentages of SIC 2851 facilities in the Dun & Bradstreet database that are represented by the 187 facilities. For a more detailed analysis, see the listing background document in the public docket for this proposed rule.

To estimate the total waste generation by the entire population of U.S. paint manufacturers (or universe), weighted data from the survey (representing the quantities generated by the 566 paint manufacturing facilities in the sampling population, as described above) is extrapolated using a multiplier of 1.7173 (= 972 ÷ 566). For example, if the total quantities of a certain residual generated by the 566 paint manufacturing facilities in the sampling population were calculated as 16,115 tons, the universe waste quantities of this residual would become 16,115 tons × 1.7173 = 27,674 tons. We used such extrapolated universe waste quantities for our waste treatment and management capacity analysis (see Section VI.E) and economic impacts analysis (see Section IX.E). In general, these extrapolated figures appear consistent with data in the Biennial Report System (see the Economic Assessment in the docket for today's proposed rule).

f. *Meeting Our Objectives for The Survey.* We believe our statistical stratified random-sampling survey collected data are representative of the paint manufacturing industry in the United States, and that the responses provided sufficient data for our use in making this listing determination. We realize that uncertainties exist in our survey. There is uncertainty in the exact number of the U.S. paint manufacturing facilities. In addition, despite our quality assurance reviews, there could still be data source or sampling errors as in any other sampling or even census surveys. For instance, some facilities might have entered inaccurate information inadvertently. Nevertheless, we have used our best efforts to collect representative data. By employing a statistically representative stratification/categorization approach aimed at surveying all types of manufacturing facilities and their waste streams, our unequal sampling survey (higher percentages of facilities were surveyed for some categories of large and medium facilities) actually enhanced the chance of identifying the rare waste management activities practiced by the paint manufacturing industry and in turn increased survey precision. This approach is reasonable and an acceptable statistical tool to ensure the best possible coverage.

Our subsequent statistical re-analysis of the questionnaire returns indicated that we achieved satisfactory statistical probabilities for finding a waste management activity used by one in 20 facilities. The final probabilities

achieved are discussed in the listing background document in the public docket for this proposed rule. In short, the probabilities achieved for two categories of paint manufacturing facilities, 85% and 86.2%, were under 90%, while the probabilities achieved for the other categories ranged from 91.7% to 100%. More importantly, the survey successfully captured a wide variety of intermediate and final waste management practices of most interest as discussed in Section III.D. Therefore, we believe we have made a reasonable effort to identify all management practices and that we have met the objective of our sampling survey designed for this listing determination.

III. Approach Used in This Proposed Listing

A. Summary of Today's Action

In listings promulgated by EPA, we typically describe the scope of the listing in terms of the waste material and the industry or process generating the waste. However, in today's rule we are proposing to use the recently developed ''concentration-based'' approach for listing paint manufacturing wastes. This approach was originally proposed for wastes generated by the Dyes and Pigments industry (64 FR 40192 of July 23, 1999). In a concentration-based listing, a waste would be hazardous unless a determination is made that it does not contain any of the constituents of concern at or above specified levels of concern. This approach draws from the concept of the toxicity characteristic to define a hazardous waste based on concentration levels of key constituents in the wastes. We describe this concept in detail later in this notice.

We are proposing two hazardous waste listings for paint manufacturing waste solids, K179 and for liquids, K180. If you generate paint manufacturing wastes from tank and equipment cleaning operations that use solvents, water, and/or caustic; emission control dusts; wastewater treatment sludges; or off-specification product, as specified in each listing description, you would need to determine whether your waste contains any of the constituents of concern identified for each listing at a concentration equal to or greater than the hazardous concentration level set for that constituent. However, the liquid K180 is a contingent listing. If your waste liquids are managed exclusively in tanks or containers prior to discharge to a POTW or under an NPDES permit, your waste would not be subject to the listing, and you would not need to make a hazardous waste determination for those wastes. We believe that under this proposed contingent listing approach, the vast majority of waste liquids would not pose unacceptable risks and would not be subject to the listing. The approach is discussed in detail in Section IV. The proposed listing descriptions are as follows:

- K179—Paint manufacturing waste solids generated by paint manufacturing facilities that, at the point of generation, contain any of the constituents identified in paragraph (b)(6)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent in paragraph (b)(6)(iii) of this section. Paint manufacturing waste solids are: (1) Waste solids generated from tank and equipment cleaning operations that use solvents, water and/or caustic; (2) emission control dusts or sludges; (3) wastewater treatment sludges; and (4) off-specification product. Waste solids derived from the management of K180 by paint manufacturers would also be subject to this listing. Waste liquids derived from the management of K179 by paint manufacturers are not covered by this listing, but such liquids are subject to the K180 listing. For the purposes of this listing, paint manufacturers are defined as specified in paragraph (b) of this section.
- K180—Paint manufacturing waste liquids generated by paint manufacturing facilities that, at the point of generation, contain any of the constituents identified in paragraph (b)(6)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent in paragraph (b)(6)(iii) of this section unless the wastes are stored or treated exclusively in tanks or containers prior to discharge to a POTW or under a NPDES permit. Paint manufacturing liquids are generated from tank and equipment cleaning operations that use solvents, water, and/or caustic. Waste liquids derived from the management of K179 by paint manufacturers would also be subject to this listing. Waste solids derived from the management of K180 by paint manufacturers are not covered by this listing, but such solids are subject to the K179 listing. For the purposes of this listing, paint manufacturers are defined as specified in paragraph (b) of this section.

Due to the uncertainties in our assessment of the management of paint manufacturing waste liquids in surface impoundments, we are seriously considering an alternative proposal not to list paint manufacturing waste liquids. We describe this alternative and our reasoning for this option later in this notice (see Section IV.D). The following discussion describes the approach we are proposing if K180 is listed.

If you generate any of these paint manufacturing wastes that you currently believe are characteristically hazardous or subject to another hazardous waste listing, you would still need to determine whether your waste is a listed hazardous waste under K179 or K180 (unless as noted above you are not subject to K180 because your wastes are managed exclusively in tanks or containers and then discharged to a POTW or under an NPDES permit). We are proposing that all generators could use knowledge of the waste to make an initial determination as to whether any of the regulated constituents are present in the waste. If you determine that none of the constituents are present in your wastes at the point of generation, then you would have no further obligation for determining whether or not your wastes are K179 or K180 listed hazardous wastes (assuming the regulated constituents are in fact not present in your wastes). If you determine that any of the constituents are present in your waste, then we are proposing that you must either use a two-tiered approach (see Section V.C for description) to determine whether the constituent concentrations in your waste are below the concentration levels in the listing or assume that your wastes are hazardous at the point of generation. Under the proposed two-tiered approach, if your total projected annual generation of paint manufacturing waste solids is over 40 metric tons, and/or over 100 metric tons of paint manufacturing waste liquids, you would need to test your wastes annually to determine whether concentration levels are below the listing concentrations. If your wastes remained nonhazardous for three consecutive years of testing and you have no significant changes to your product and/or manufacturing or treatment processes, the annual testing requirement would be suspended. If you made significant changes to product and/or manufacturing or treatment processes, the annual testing requirements would be reinstated. If your projected annual waste generation is below these volumes, you would have the option of either using knowledge of the waste or testing to determine whether constituent concentrations are below the listing concentrations. If any constituent is present at or above the concentration level, then your waste is hazardous waste. We are proposing that generators with annual waste generation exceeding 40 metric tons of solids and/or 100 metric tons of liquids keep limited records on-site.

If your wastes meet the listing description, they would be subject to all applicable RCRA subtitle C hazardous waste requirements, including LDR requirements. This means that any characteristically hazardous wastes or wastes hazardous under other listing codes (for example F codes) that are determined to be hazardous under these listings would also be subject to

treatment requirements for K179 and K180, in addition to any other applicable treatment requirements.

There are several differences in the way the ''derived from'' rule (40 CFR 261.3(c)(2)(i) would be applied to these wastes that have one or more constituents above the proposed risk-based levels. Residues from the treatment of solid K179 wastes are no long hazardous wastes if their constituent concentrations are below the concentration levels for K179. However, these treatment residues would still be subject to all LDR requirements. As explained in Section IV, liquid K180 wastes, however remain subject to the derived from rule. Also, the listing descriptions make it clear that if a liquid is generated from the onsite management of the solid K179 waste, it is no longer subject to the K179 listing, rather it is subject to the K180 listing. If a solid is generated from the onsite management of the liquid K180 waste, it is no longer subject to the K180 listing, rather, it is subject to the K179 listing. Once K179 or K180 wastes are sent offsite waste codes do not change. These provisions are discussed in Section IV.F.

B. What Is a Concentration-Based Listing?

A concentration-based listing specifies constituent-specific levels in a waste that cause the waste to become a listed hazardous waste. In this proposed rule, we identify constituents of concern likely to be present in solvent, water, and/or caustic cleaning residuals; wastewater treatment sludges; emission control dust or sludges; and off-specification products and which may pose a risk above specified concentration levels. Using risk assessment tools developed to support our hazardous waste identification program, we assessed the potential risks associated with the constituents of concern in plausible waste management scenarios. From this analysis, we developed ''listing concentrations'' for each of the constituents of concern in the waste categories listed above.

If you generate any paint manufacturing waste liquids or solids addressed by this proposed rule, including any listed or characteristically hazardous wastes, you would be required either to determine whether or not your waste is hazardous or assume that it is hazardous as generated under today's proposed K179 and K180 listings. We are proposing that you must make a determination whether your waste is a listed hazardous waste through process knowledge or by determining representative concentrations for the constituents of concern in your waste through sampling and analyses (depending on the volumes of hazardous waste and nonhazardous waste within the scope of this listing that you generate each year). You can use process knowledge to demonstrate that the constituents of concern are not present in your waste. Your waste would be a listed hazardous waste if it contains any of the constituents of concern at a concentration equal to or greater than the hazardous concentration identified for that constituent. The detailed descriptions of the steps you would be required to follow to implement the concentration-based listing are described later in this proposed rule.

C. Why Is a Concentration-Based Approach Being Used for This Listing?

Thousands of constituents, also referred to as paint raw materials or ingredients, are used in paint formulations.[9] At the same time, there are a number of chemicals that are very widely used in many different types of paints. Because paints are produced in batch processes that generally do not involve chemical reactions among the raw materials, the finished paint and wastes consist of a mixture of the different raw materials. Paint production wastes can also contain constituents used for tank cleaning and other maintenance operations. As a result, it is straightforward for a manufacturer to know what constituents are likely to be present in his wastes.

Taking these facts into account, a concentration-based approach to listing paint production wastes as hazardous has a number of advantages. We can use the approach to focus more narrowly on ingredients that are likely to be widely used in paint formulations and that are likely to pose risks to human health and the environment. A concentration-based approach allows generators to evaluate the variable wastes they generate individually for hazard, so only the truly hazardous wastes are listed. This can place less burden on paint manufacturers than a traditional listing that brings entire waste streams into the hazardous waste system, regardless of the characteristics of wastes generated by individual generators. The level of any burden reduction depends on the costs of testing and the amount and type of wastes generated by a given facility. This approach is protective because it relies on concentration levels specifically set to protect human health.

Finally, a concentration-based listing approach may provide an incentive for hazardous waste generating facilities to modify their manufacturing processes or treat their wastes. For example, if a manufacturer has a listed hazardous waste based on constituent-specific concentration levels established by EPA, he also knows that if the concentration levels are reduced below the regulatory level due to raw material substitution or process change, the waste would not be regulated as listed hazardous waste. Therefore, the generator may decide to substitute raw materials in order to generate a nonhazardous waste (assuming that the waste does not carry any other listed or characteristic hazardous waste codes). This approach encourages waste minimization and reduced use of toxic constituents, goals of both RCRA and the Pollution Prevention Act of 1990 (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990).

RCRA, section 1003 states that one goal of the statute is to promote protection of human health and the environment and to conserve valuable material and energy resources by ''minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling, and reuse and treatment.'' Section 1003 further provides that it is a national policy of the United States that, whenever feasible the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible.

The Pollution Prevention Act of 1990 provides a hierarchy of approaches. Pollution should be prevented or reduced; pollution that cannot be prevented should be recycled or reused in an environmentally safe manner; pollution that cannot be prevented/reduced or recycled should be treated; and disposal or release into the environment should be chosen only as a last resort. If EPA provides a concentration-based target in the listing, generators would have the regulatory and economic incentive to meet the reduced levels.

Alternatively, we could have attempted to collect more information on these specific wastes to support the traditional listing approach, i.e., without any concentration limits. However, such a data collection effort would have been difficult due to the large number of paint production facilities, coupled with the wide variety of individual paint products and the potential variability in waste characteristics. Considering the

[9] *Paint and Coating Raw Materials,* 1996. Michael and Irene Ash, Synapse Information resources, Gower Publishing Ltd, lists more than 11,000 trade names and generic raw materials from 1300 manufacturers that are available for use in paints.

extensive sampling effort that this would require, and the relatively small quantities of wastes produced by individual paint facilities, we do not feel that such an effort was justified.

D. How Did the Agency Use the Survey Results for This Proposed Listing Determination?

We used the 3007 survey data for several purposes: (1) To provide the information for a general assessment of the paint and coating industry's waste generation and management practices; (2) to identify plausible waste management scenarios that are the basis for our risk assessment and listing determination; and (3) to serve as the data input for risk modeling parameters such as waste types and amounts sent to specific management practices.

This section primarily addresses the survey results as a basis for choosing plausible management scenarios for risk assessment and listing determinations and for selecting data for input to our risk modeling parameters. In addition, we used the survey data for our land disposal restrictions treatment capacity analysis and for our economic impact analysis discussed in sections VI and IX.

1. General Assessment of the Paint Industry's Waste Generation and Management Practices

Our first step was to characterize the U.S. paint and coating industry's generation and management practices. We considered a series of questions, such as: how much waste was generated in 1998; of that total, how much was RCRA hazardous waste and nonhazardous waste; what types of waste were generated; and how were these wastes managed? Table III.D–1 captures the weighted quantities of wastes within the scope of this listing reported by facilities completing the 3007 survey. See Section II.H for a discussion of the weighting process. With respect to total amounts of waste generated our analysis showed the following:

- We extrapolated from our estimated 566 paint and coating manufacturers in the sampling population of 884 to estimate that there are 972 paint and coating manufacturers, as explained in Section II, H(e). Out of these 972, we estimate that about 600 facilities annually generate about 107,000 metric tons of hazardous and nonhazardous waste within the scope of this listing.[10]
- About 36 percent of paint manufacturing wastes are already RCRA hazardous wastes, while 64 percent are currently nonhazardous.
- A few paint manufacturers produce the majority of the waste. Ten percent of manufacturers generating waste potentially within the scope of this listing generate about 80 percent of the total amount of waste; and two percent of the manufacturers generate about 50 percent of the total waste. Approximately half of paint manufacturers generate less than five metric tons of waste per year.
- Paint manufacturers mainly generate five types of nonhazardous waste liquids and waste solids: washwater cleaning liquid, washwater cleaning sludge, wastewater treatment sludge, emission control dust and off-specification product. As shown in Table III.D–2, these five waste types account for over 99% of all nonhazardous waste generated in 1998.
- About 27 percent of the manufacturers do not generate any waste—all their waste liquids and waste solids are recycled back into paint production processes.

After a thorough review of the data and other general observations about the paint industry generation and management practices, we focused further analyses only on nonhazardous wastes. We believe that this approach is appropriate because hazardous paint manufacturing wastes are currently managed according to RCRA Subtitle C regulatory controls. From our survey of the industry, we found that about 36% of the paint manufacturing wastes were coded and managed as listed or characteristically hazardous waste. The listed wastes typically carried a code for solvent wastes (F001 through F005), and characteristic wastes usually exhibited the characteristic of ignitability or toxicity. Based on available data from the survey, we believe that listed or characteristically hazardous waste are being properly managed under RCRA. The data supplied voluntarily by survey respondents that we have on constituent concentrations in wastes classified as nonhazardous show that the concentrations of TC constituents are well below the TC levels. By narrowing the scope of our analysis to include only nonhazardous wastes, we were able to concentrate risk assessment and subsequent listing decisions on the wastes that may not already be managed in a way that adequately protects or minimizes threats to human health and the environment. However, this proposed listing would apply to any paint manufacturing waste generated by the paint manufacturers from tank and equipment cleaning operations that use solvents, water and/or caustic; emission control dust; waste treatment sludges and off-specification production waste regardless of how the waste has been or is currently being managed.

TABLE III.D–1.—PAINT MANUFACTURING WASTES GENERATED IN 1998

Weighted waste quantities (metric tons)	Paint manufacturing waste category					
	Solvent cleaning waste	Water and/ or caustic cleaning waste	Wastewater treatment sludge	Emission control dust/ sludges	Off-speci- fication product	Total
Hazardous	18507	1047	0	39	3029	22622
Nonhazardous	39	34098	1490	1972	1948	39547
Hazardous and Nonhazardous	18546	35145	1490	2011	4977	62169

[10] Note that we used weighted waste quantities in our risk assessments (explained in Section II.H(e)), because the weighted quantities are directly derived from our survey data and we are more certain these waste quantities represent the true distribution of the sampled population.

TABLE III.D–2.—NONHAZARDOUS PAINT MANUFACTURING WASTE LIQUIDS AND SOLIDS GENERATED IN 1998

	Weighted waste quantity (metric tons)
Nonhazardous Waste Liquids:	
Solvent Cleaning Liquid	4
Washwater Cleaning Liquid	31,036
Caustic Cleaning Liquid	66
Total Nonhazardous Liquids	31,106
Nonhazardous Waste Solids:	
Solvent Cleaning Sludge	35
Washwater Cleaning Sludge	2990
Caustic Cleaning Sludge	6
Wastewater Treatment Sludge	1490
Emission Control Dust	1972
Emission Control Sludge	0
Off-Specification Product	1948
Total Nonhazardous Waste Solids	8441

2. Management Scenarios Currently Used at Paint Facilities and Our Selection of Waste Management Scenarios for Risk Assessment Modeling

This section summarizes our findings and conclusions concerning current paint manufacturing practices for nonhazardous waste management; the plausible waste management scenarios that we chose to model for the risk assessment; and why we did not model certain management practices. We also explain how we selected survey data from waste types and quantities going to specific management practices for risk modeling parameters. This entire section presents weighted survey data (See Section II.H(e)), unless otherwise noted. We believe that the weighted data that is derived from the responses of the estimated 566 paint manufacturing facilities most closely represents the distribution of actual paint facility waste quantities managed at individual waste management units at the 884 facilities in the sampling population, which we assume are representative of the universe of affected paint manufacturers. Table III.D–2 summarizes non-hazardous waste liquids and solids generation.

We chose to model four waste management scenarios based upon our review of the current waste handling practices reported in the survey and the plausibility that these scenarios represent actual practices that are used or could be used by the paint industry for disposal of paint manufacturing wastes. The scenarios that we chose are waste solids disposed in industrial nonhazardous waste landfills; waste liquids stored and treated in off-site tanks at centralized wastewater treatment facilities (CWTs) prior to discharge to a POTW or under a NPDES permit; waste liquids disposed in surface impoundments at CWTs; and, waste liquids stored and treated in tanks on-site at paint manufacturing facilities prior to discharge to a POTW or under a NPDES permit. The general criteria for selection of plausible waste management scenarios and the rationale for choosing each of these four scenarios is described in this section.

a. *Plausible Waste Management Selection Criteria and Modeling Considerations.* Our regulations at § 261.11(a)(3)(vii) require us to consider the risk associated with ''the plausible types of improper management to which the waste could be subjected'' because exposures to wastes (and therefore the risks involved) will vary by waste management practice. The choice of which ''plausible management scenario'' (or scenarios) to use in a listing determination depends on a combination of factors which are discussed in general terms in our policy statement on hazardous waste listing determinations contained in the proposed Dyes and Pigments Listing Determination (59 FR 66072, December 22, 1994). We have applied this policy in several previous listings and, with some specific modifications that reflect unique characteristics of the paint industry, believe it is appropriate to apply it here.

Our approach to selecting waste management scenarios to model for risk analysis is to examine current industry management practices; assess whether or not other practices are available to the industry; and to decide what the industry would reasonably be expected to use. There are common waste management practices, such as landfilling, which we generally presume may be plausible for solid wastes and which we will evaluate for potential risk. There are other practices which are less common, such as land treatment, where we consider them plausible only where the disposal methods have been reported to be practiced. Where a practice is actually reported in use, that practice is generally considered ''plausible'' and may be considered for potential risk. In some situations, potential trends in waste management for a specific industry suggest we will need to project ''plausible'' management even if it is not currently in use in order to be protective of potential changes in management and therefore in potential risk. We then evaluate which of these current or projected management practices for each waste stream are likely to pose significant risk based on an assessment of exposure pathways of concern associated with those practices.

To model plausible waste management practices in the paint industry, we used the individual waste quantities going from the surveyed facilities to a particular type of management unit. This data was used in a national risk modeling analysis to capture the range of waste quantities from all facilities in the sampling population sent to a particular type of waste management unit (the weighted waste quantity distribution). Each waste quantity in the weighted distribution has a weighting factor that represents the number of facilities in the total sampling population that send a particular waste to a particular waste management unit. We do not analyze the total quantity of wastes (i.e., the total universe waste generation data) going into a single waste management unit because this scenario never occurs. As discussed later in this section, when we found evidence that multiple waste streams from a single facility or wastes from more than one facility are sent to the same management unit, we added those quantities to ensure that we accurately reflect the individual and combined quantities of paint manufacturing wastes that are sent to a single management unit. (Section III.D.2(c), below explains the methodology we used to compile the survey data for input to the risk assessment models.)

EPA estimates that in 1998, the 884 facilities in the sampling population generated 8,441 metric tons of nonhazardous waste solids and 31,106 metric tons of nonhazardous waste liquids. As would be expected, wastes generated from paint production batches are also generated in batches rather than in a continuous stream. Generally, the waste quantities associated with each batch are relatively small, so that these smaller quantities are aggregated and added into containers or tanks as each new batch is produced. Liquid wastes are added into liquid wastes and solid wastes are added into solid wastes, so that a variety of waste types (for example sludges from tank cleaning operations and wastewater treatment) may be combined and sent off to one waste management unit. At the same time, some waste types are managed separately, if for example they have some value for fuel blending, rather than simply being sent off to land disposal or wastewater treatment and discharge. We were able to distinguish

these management practices from the survey data.

One final note, before looking at solid and liquid wastes separately. The total waste quantities that are accounted for in all of the management practices that we discuss are not equivalent to the total waste generation quantities. We believe there are several reasons for this. First, because of the way the survey was structured, we were not able to obtain an absolute balanced accounting of waste generation and waste management from each facility. Some of the discrepancy reflects waste management situations that may span one year to the next, e.g., when a facility accumulates waste over a longer time period before sending it on to disposal. Second, some wastes (or residuals) may be accumulated for a time, and then recycled back into the manufacturing process instead of being disposed. Third, there may be some undetected reporting errors in the database. In any event, the discrepancy between waste quantities generated in 1998 and waste quantities disposed in 1998 is not significant for risk assessment purposes. In the risk assessment, we use a distribution of individual waste quantities actually sent to management scenarios as input to the model, not national total waste quantities. The distribution of individual waste quantities would not be significantly affected by the discrepancy between wastes volumes generated and waste volumes disposed.

Before we proceed to the technical discussion of our rationale for choosing certain modeling scenarios and parameters, we will briefly explain why we chose to structure these discussions as they are presented in this preamble. We estimate that the 884 facilities in the sampling population disposed of 44,278 metric tons of nonhazardous waste solids and waste liquids in 1998 as shown in Tables III.D–3 and III.D–4. These tables show that the disposal destinations, as would be expected, are different for the waste solids and the waste liquids. The same four waste solids that comprised the majority of the nonhazardous waste solids generated in 1998 have very similar waste management patterns. In contrast, the largest quantity of waste liquid generated in 1998, washwater cleaning liquid is managed differently from the solids and almost entirely through discharge to off-site public and private wastewater treatment facilities. For these reasons, we split our analysis of the waste solids and waste liquids. It was clear that risk modeling for these two types of wastes would differ, therefore it seemed reasonable to analyze the waste management patterns for them separately.

b. *Selection of Waste Management Scenarios for Risk Assessment Modeling of Nonhazardous Paint Manufacturing Waste Solids.* Table III.D–3 lists the estimated weighted quantities of each type of nonhazardous waste solid going to each management practice for the 884 facilities in the sampling population. The total amount of waste solids disposed in 1998 was 8,226 metric tons (weighted). Of these 8,226 metric tons, 8,152 metric tons is made of the same four waste solids that comprised the majority of solid waste generated in 1998: off-specification product, emission control dust, washwater cleaning sludge and wastewater treatment sludge. We estimate that the major portion of these four solid waste streams, 6,926 metric tons, is disposed in Subtitle D municipal and industrial landfills (nonhazardous landfills). These 6,926 metric tons includes 942 metric tons of off-specification product, 1,947 metric tons of the emission control dust, 1,440 metric tons of wastewater treatment sludge and 2,597 metric tons of washwater cleaning sludge disposed in 1998. In addition, 35 metric tons of solvent sludge goes to nonhazardous landfills. The remaining 1,300 metric tons of waste solids disposed in 1998 go to Subtitle C landfills, fuel blenders, CWTs, waste piles, incinerators, cement kilns, boilers and industrial furnaces and ''other'' management units. Note that tanks and containers are intermediate storage and treatment units and their waste quantities are not counted in the total 8226 metric tons disposed in 1998.

TABLE III.D–3.—NONHAZARDOUS WASTE SOLIDS MANAGEMENT

Waste mgt. units	Waste solids types (weighted quantities in metric tons)						
	Off-spec. product	Emission control dust	Emission control sludge	Wastewater treatment sludge	Washwater cleaning sludge	Caustic cleaning sludge	Solvent cleaning sludge
Subtitle D/MLF	**942**	**1947**	0	**1440**	**2597**	0	**35**
Subtitle C	**80**	**9**	0	0	**352**	0	0
On-site S. tank	53	0	0	0	1814	0	0
Off-site S. tank	0	0	0	0	0	0	0
On-site Trt. tank	0	1066	0	487	0	0	0
Fuel Blending	**352**	0	0	**21**	**4**	0	0
POTW	0	0	0	0	0	0	0
WWTF	**48**	0	0	**5**	0	0	0
NPDES	0	0	0	0	0	0	0
INC	**72**	**5**	0	**24**	**50**	**6**	0
Cement Kiln	**56**	0	0	0	0	0	0
BIF	**3**	0	0	0	0	0	0
Container	2023	3052	0	992	1154	6	2
Waste Pile	0	0	0	0	0	0	**33**
Other	**133**	**11**	0	0	**1**	0	0
Totals**	**1686**	**1972**	0	**1490**	**3004**	**6**	**68**

**Total of each waste solid disposed in 1998 includes all disposal types except tanks and containers. The tanks and containers are considered intermediate handling, not final disposal destination steps.

Note: The bolded numbers within the table are those that were used to derive the totals for each column.

MLF=Municipal Landfill

On-site S. tank=On-site Storage tank

Off-site S. tank=Off-site Storage tank

On-site Trt. Tank=On-site Treatment tank

NPDES=National Pollutant Discharge Elimination System

INC=incinerator

BIF=Boiler & Industrial Furnace
POTW=Publicly Owned Treatment Works
WWTF=Wastewater Treatment Facility

Based on this information, we chose to model disposal of waste solids in industrial nonhazardous landfills. This is a common disposal practice for a large portion of the waste solids disposed in 1998. There are only two differences in modeling assumptions for industrial nonhazardous landfills as compared to municipal landfills. Industrial nonhazardous landfills are slightly smaller than municipal landfills so the quantities of paint manufacturing waste modeled in the industrial landfill are a relatively larger proportion of the total waste quantities going into the unit. Also, industrial nonhazardous landfills are not assumed to have daily cover. Both of these add to the conservatism of the protective constituent levels predicted by the risk assessment. For our inputs to the risk modeling, we used quantities of off-specification product, emission control dust, wastewater treatment sludge, washwater cleaning sludge and solvent sludge sent to nonhazardous landfills. We did not include the small volume of caustic cleaning sludge because they were incinerated and they were not disposed in nonhazardous landfills. Emission control sludge was not included either because it was not generated by any of the survey respondents in 1998. The risk assessment in Section III.E, contains more details about the methodology of the risk modeling process.

At the outset of our analysis of the survey data, we did not believe that a landfill was a logical disposal destination for off-specification product. We further investigated the disposal information for off-specification product and decided that it should be in our waste solids quantity distribution for risk assessment. We contacted the eleven facilities that reported generating off-specification paint. Nine of the eleven facilities stated that they sent only dried paint wastes to nonhazardous landfills. The tenth facility reported sending 7.5 metric tons of mostly dried paint and paint flakes with small amounts of liquid paint wastes to landfills. The eleventh facility reported sending 14.7 metric tons of off-specification product of unknown physical characteristics to nonhazardous landfills in 1998. We chose to model off-specification product with waste solids sent to nonhazardous landfills because large quantities (920 out of 942 metric tons) of this waste are in dry form when sent to nonhazardous landfills. Also, Municipal Solid Waste landfills have a prohibition on disposal of liquids and we believe that the majority of commercial industrial landfills do also (according to a 1995 EPA report ''State Requirements for Industrial Non-Hazardous Waste Management Facilities,'' 28 states restrict the placement of liquids in industrial nonhazardous waste landfills).

The survey data contained information about four types of waste management practices for waste solids that we chose not to model. The first of these is treatment of solvent sludge in a waste pile. One facility reported using a waste pile as an intermediate waste management step for 33 metric tons of solvent sludge. Based on further discussion with the facility contact, we determined that this waste was a free flowing slurry that was piled on cardboard boxes inside a containment building to dry and then disposed in a nonhazardous landfill. We chose not to model this scenario because the waste is managed in a closed facility. It is not open to airborne wind transport and does not involve placement directly on the land. The remaining solidified waste is disposed in a nonhazardous landfill.

Another type of waste management that we did not model is combustion in incinerators, cement kilns, and boilers and industrial furnaces. In past listing determinations where we have attempted to assess risks from incineration, we found that the potential risks from the release of constituents through incineration would be at least several orders of magnitude below potential air risks from releases from tanks or impoundments (see listing determination for solvent wastes at 63 FR 64371, November 19, 1998). Further, it is difficult to model what goes into combustion units in relation to the residual constituents that are released from the combustion unit either in ash or air.[11]

We also chose not to model solid wastes sent to fuel blenders. All of the fuel blending facilities reported in the survey were located at Subtitle C permitted facilities. Since these fuel blenders receiving paint manufacturing waste solids are RCRA permitted, they must comply with protective regulations regarding releases from RCRA units and from the RCRA facility. Finally, for these units it is also difficult to model what goes into the unit in relation to the residual constituents that are released from the unit to the air.

One last category of management unit that we chose not to model is the ''other'' category. For the waste solids reported in this survey, ''other'' encompassed a variety of waste management types. The total 145 metric tons of waste solids handled in ''other'' management units can be divided into four categories: Wastes that are disposed off-site at waste treatment facilities, wastes that are reworked back into the paint process, wastes that are sold to other companies and wastes sent for precious metal recovery. Sixty-nine (69) metric tons of off-specification product and emission control dust were sent to off-site waste treatment and disposal facilities. Nine metric tons were treated on-site and then sent to a Subtitle C landfill. Fifty-nine (59) metric tons of off-specification product and emission control dust were reworked back into the paint process on-site. Small quantities of off-specification product and emission control dust totaling 3.5 metric tons were sold to other companies who were not concerned about the quality of the paint manufacturing waste for the manufacture of a new product or the resale of a low grade paint. Less than one metric ton (0.7) of emission control dust was sent to an off-site precious metal recovery facility for recovery of the silver in the paint manufacturing waste. Three metric tons of waste solids out of the 145 metric tons is emission control dust that was reported to be released to the air from pollution control devices that were not functional. The remaining one metric ton of washwater cleaning sludge was sent to an off-site waste treatment facility. We chose not to model any of these scenarios because the scenarios we did decide to evaluate were likely to be the riskier scenarios and over half of these wastes going to ''other'' units were either being reworked into the paint process or used for manufacture of other products.

The paint manufacturing industry recycles several of its waste streams. One of these streams is air emissions control dust. Sometimes this material is used on-site in the formulation of low-grade paint, or sent off-site to other

[11] While other products of incomplete combustion may present possible risks, it is difficult for us to assess this potential for the chemicals of concern, especially for the likely scenario of a small volume of paint manufacturing wastes being treated with other much larger volumes of organic wastes.

paint manufacturers for the same purpose (in neither case is reclamation involved). In either case, the dust would not be considered a solid waste because it is used or reused as an ingredient in an industrial process to make a product pursuant to 40 CFR 261.2(e)(I)). The dust contains valuable raw materials that are required to make paint products. We have therefore not included these recycled dusts when modeling our waste disposal scenarios. The Agency also notes that this practice appears to be a form of legitimate recycling because paint (even low-grade paint) must always meet certain specifications to be usable. Recycled dust would only be added if it served as a required ingredient in the paint.

Another method of recycling air pollution control dust involves sending the materials off-site for recovery of precious metals (e.g., gold, silver, platinum). These materials would be considered solid and hazardous wastes if they exhibit the toxicity characteristic for metals, or if they exceeded the concentration levels in today's proposed listing. Under those circumstances, they would be subject to the reduced regulatory requirements of 40 CFR 266.70. However, EPA has chosen not to include these materials in our waste disposal scenarios because we believe that their inherent economic value would ensure careful handling, thereby greatly minimizing the risk of releases. See the 1985 rationale for the special regulatory regime for precious metal reclamation (50 FR614, 648–49 (January 4, 1985)).

c. *Selection of Waste Management Scenarios for Risk Assessment Modeling of Nonhazardous Paint Manufacturing Waste Liquids.* EPA estimates that the 884 paint manufacturing facilities in the sampling population disposed of 36,052 metric tons (weighted) of waste liquids in 1998. Over 99% of this amount is washwater cleaning waste. A very small amount of solvent cleaning and caustic cleaning liquids make up the remaining 69 metric tons. Table III.D–4 shows how the 36,052 metric tons of nonhazardous waste liquids were disposed in 1998.

The predominant destinations for washwater cleaning liquids are POTWs and CWTs. About 27,625 metric tons of washwater cleaning liquid go to POTWs and 6407 metric tons go to CWTs. Some of the 27,625 metric tons of washwater cleaning liquid is directly discharged to POTWs, but a significant portion is stored and treated on-site prior to being sent to the POTW. Fourteen thousand five hundred thirty (14,530) metric tons of washwater cleaning liquids are managed in on-site storage tanks and 7487 metric tons of washwater cleaning liquids are managed in on-site treatment tanks. These tanks are the intermediate storage and treatment units for almost all of the washwater cleaning liquids going to POTWs, CWTs and the remaining waste management categories where these liquids are disposed. The survey results indicated that about 17,000 metric tons of washwater cleaning liquids are directly discharged by paint facilities to POTWs. The remainder of the washwater cleaning liquids (10,000 metric tons) that are sent to POTWs are stored or treated in on-site tanks prior to discharge to the POTW. One facility directly discharges 76 metric tons of washwater cleaning liquid under a NPDES permit. These NPDES and POTW point source discharges that are subject to regulation under Section 402 of the Clean Water Act are excluded from the RCRA statutory definition of solid waste and therefore are not subject to RCRA regulation. See 42 U.S.C. 6903(2) and 40 CFR 261.4(a)2. However, while the liquids are being collected, treated or stored they are subject to RCRA regulation. This also applies to any sludges derived from the storage or treatment of the liquids.

Another destination for washwater cleaning liquid is offsite storage and treatment tanks at CWTs. About 6407 metric tons of washwater is sent to CWTs for treatment and then discharged to POTWs or under a NPDES permit. The volumes of washwater liquid are probably stored and treated in offsite tanks as our survey data showed that they are onsite.

''Other'' management units receive 1309 metric tons of washwater cleaning liquids. Five hundred sixty-three (563) metric tons of washwater cleaning liquid goes to fuel blending units, incinerators and cement kilns. A very small amount of washwater cleaning liquid, 3 metric tons was sent to nonhazardous landfills in 1998.

The other two waste liquid streams, solvent cleaning and caustic cleaning liquid are disposed at fuel blending facilities and at POTWs, respectively. POTWs received about 32 metric tons of caustic cleaning liquids and fuel blenders received 4 metric tons of solvent cleaning liquid in 1998. Sixty-one (61) metric tons of caustic cleaning liquid is stored or treated in on-site tanks and an additional 33 metric tons is managed in ''other'' units.

Based on these facts, we chose several modeling scenarios. The first of these was the off-site storage of washwater cleaning liquids in uncovered tanks at CWTs. About 18% of the yearly total of washwater cleaning liquid disposed goes to CWTs. Another scenario we modeled was the onsite treatment of washwater in tanks prior to discharge to a POTW or under a NPDES permit. We also chose to model the on-site treatment of washwater cleaning liquids in tanks because a significant amount of liquids are handled in on-site tanks. This modeling scenario should account for any exposure to washwater cleaning liquids and sludges being treated in on-site tanks that are subsequently disposed through a POTW or NPDES discharge.

We also chose to model waste liquids managed in an unlined surface impoundment because we found one lined surface impoundment at a CWT and we cannot, at this time, rule out the possibility that some quantities of liquid paint manufacturing wastes may be managed in an unlined impoundment which would present greater risks of release to the environment. Survey respondents did not report any on-site impoundments for management of liquid wastes. However, because we know that waste management in surface impoundments, and particularly in unlined impoundments, could pose significant risk, we chose to look for other plausible scenarios that might involve impoundments.

TABLE III.D–4.—NONHAZARDOUS WASTE LIQUIDS MANAGEMENT

Waste mgt. units	Waste Liquid types (weighted quantities in metric tons)		
	Washwater cleaning liquid	Caustic cleaning liquid	Solvent cleaning liquid
Subtitle D/MLF	**3**	**0**	0
Subtitle C	0	0	0
On-site S. tank	14530	33	0

TABLE III.D–4.—NONHAZARDOUS WASTE LIQUIDS MANAGEMENT—Continued

Waste mgt. units	Waste Liquid types (weighted quantities in metric tons)		
	Washwater cleaning liquid	Caustic cleaning liquid	Solvent cleaning liquid
Off-site S. tank	1	0	0
On-site Trt. tank	7487	28	0
Fuel Blending	**455**	0	**4**
POTW	**27625**	**32**	0
WWTF	**6407**	0	0
NPDES	**76**	0	0
INC	**56**	0	0
Cement Kiln	**52**	0	0
BIF	0	0	0
Container	1517	0	4
Waste Pile	0	0	0
Other	**1309**	**33**	0
Totals**	**35983**	**65**	**4**

** Totals for each column are derived from addition of all the bolded numbers in each column. This total includes all disposal types except tanks and containers, these are considered intermediate handling, not final disposal destination steps.

Note: The bolded numbers within the table represent the quantities of disposed waste that were summed to calculate the total waste disposed for each waste type.

MLF=Municipal Landfill
On-site S. tank=On-site Storage tank
Off-site S. tank=Off-site Storage tank
On-site Trt. Tank=On-site Treatment tank
NPDES=National Pollution Discharge Elimination System
INC=incinerator
BIF= Boiler & Industrial Furnace
POTW=Publicly Owned Treatment Works
WWTF=Wastewater Treatment Facility

In other listing determinations, we have found management in surface impoundments for a number of waste streams, although on-site impoundments are more often associated with industries managing larger quantities of liquids. As discussed above, a number of facilities send their liquid waste to CWTs. These are the facilities that we believe could plausibly be managing wastes in surface impoundments. We contacted nine CWTs identified by survey respondents as receiving their wastes to determine whether any of them employ impoundments as part of their treatment processes. In fact, we found one facility that uses a double-lined impoundment.

Twenty-one survey respondents indicated that they are sending liquid waste to facilities they identified as wastewater treatment facilities. Considering the universe of estimated 972 paint manufacturers, we estimate that 4 or 5 other impoundments may be receiving paint manufacturing wastes (see the listing background document for this analysis). It may be reasonable to assume that management of paint manufacturing wastes in an unlined surface impoundment may occur. Therefore, we assumed this is a plausible management scenario that we modeled for our risk assessment. Section IV. D (proposed listing determination) contains additional discussion concerning uncertainties associated with this scenario and discussion of whether this is likely to be sufficiently rare that we should consider an alternative approach.

Finally, we chose to model management of washwaters in on-site, uncovered treatment tanks. Eight survey respondents reported that they had uncovered on-site storage and treatment tanks. Volatile emissions from the hazardous constituents contained in the washwater cleaning liquids could be released into the air from these uncovered tanks. Therefore we also chose to model management of waste liquids in uncovered on-site treatment tanks because treatment tanks represent a more conservative modeling scenario (higher air emissions from aerated tanks) than storage tanks. We modeled the scenario of waste liquids stored in uncovered storage tanks. We used the weighted quantities of waste liquids (22,078 metric tons) reported in the survey as being managed in on-site storage and treatment tanks.

There were five types of waste liquid management that we did not choose to model. One of these management scenarios is the disposal of washwater cleaning liquid in nonhazardous landfills. We contacted the facilities that reported this practice and found that, in both cases, the washwater cleaning liquid sent to the landfills was a liquid/solids mixture. One facility reported that the mixture was filter pressed at the landfill, the water portion was discharged to a POTW and the remaining sludges were dried and disposed in a nonhazardous landfill. The other facility reported that the liquid portion was incinerated and the solids placed into a nonhazardous landfill. These scenarios are not, therefore placement of liquids in a landfill. The next type of waste liquids management that we did not model is the direct discharge of washwater cleaning liquids to a POTW. RCRA regulation of waste liquids that are stored or treated in tanks prior to discharge to a POTW or under a NPDES permit is excluded under 40 CFR 261.4(a)(2), at the permitted discharge point for the facility. The on-site storage, collection and treatment of liquids and sludges generated from waste liquids are however, subject to RCRA regulation. Another management type that was not modeled is the combustion of washwater cleaning liquids and caustic cleaning liquids in incinerators and cement kilns or via fuel blending. In the previous section on waste solids we explain the Agency's rationale for not modeling combustion

or fuel blending. That rationale applies equally to waste liquids.

The categories of ''other'' units reported for waste liquids that we considered but did not select for modeling are: 541 metric tons of washwater cleaning liquids reworked back into the paint process; 570 metric tons of washwater cleaning liquids treated on-site in tanks and discharged to POTW and NPDES point sources; 51 metric tons of washwater and caustic cleaning liquids stabilized on-site and sent to Subtitle C landfills and 179 metric tons of washwater cleaning liquids sent to on-site and off-site treatment units. The washwater cleaning liquids reworked back into the paint process may not be in the scope of this listing. However, our modeling of uncovered on-site treatment tanks does estimate the risks from any of these washwater liquids that are within the scope of the listing. The washwater cleaning liquids reported under ''other'' that are discharged to a POTW should have been reported as going to POTWs and included in that quantity of washwater cleaning liquids. As explained earlier, the on-site treatment or storage of any liquids being discharged to a POTW is covered by our risk modeling of on-site treatment tanks. The washwater and caustic cleaning liquids that are treated on-site and sent to a Subtitle C landfill are also covered by our on-site treatment tank modeling. The last group of ''other'' units (the 179 metric tons of waste liquids) consists of 23 metric tons of washwater cleaning liquid sent for off-site treatment and disposal; and 156 metric tons of on-site treatment conducted in tank type units. The estimate of any risks posed from the treatment of washwater cleaning liquids in these units should be covered by our risk modeling of on-site treatment in tanks of washwater cleaning liquids.

d. *Survey Data as Input to Modeling Parameters.* To conduct a risk assessment for these wastes, we needed to assemble the survey data associated with disposal of waste solids and waste liquids into our chosen waste management units of concern: industrial nonhazardous landfills, on-site tanks, off-site tanks and surface impoundments. The specific data we used were the quantities of waste solids and waste liquids sent by each facility to each of our four management units of concern. We used these data as input to the modeling parameters in our risk assessment. The risk assessment estimated the concentration of individual constituents that could be present in each waste and remain protective of human health and the environment. These risk based constituent concentration levels in the waste streams are the levels that can be managed in the waste streams and remain below a target cancer risk level of 1×10^{-5} excess lifetime cancer risk for individuals exposed to carcinogens in the waste streams and a target hazard quotient (HQ) of 1.0 for individuals exposed to constituents in the waste streams that produce noncancer health effects.

We also needed to capture the distribution of waste quantities going to individual waste management units. Once we determined that we could represent paint manufacturing wastes as solids and liquids disposed in nonhazardous landfills, on-site treatment tanks, off-site wastewater treatment tanks and surface impoundments, we then developed a methodology to assemble the waste quantity distributions for solids and liquids sent from each facility in the sampling population to each of these four types of waste management units. We used the individual weighted quantities of waste solids sent to nonhazardous landfills to compile the waste solids distribution and the individual weighted quantities of waste liquids sent to tanks and surface impoundments at offsite wastewater treatment facilities for the waste liquids distribution. We considered several factors in developing the waste quantity distributions including the total quantities of each individual type of waste stream reported by the surveyed facilities, whether any facilities that generate these wastes may produce quantities of waste conditionally exempted under EPA regulations for small quantity generators and whether any of the surveyed facilities reported waste co-management scenarios.

First, we identified conditionally exempt small quantity generators by combining the entire hazardous and nonhazardous paint manufacturing waste solid and liquid quantities for all waste streams within the scope of this listing generated by each surveyed facility. We compared these quantities of waste to the amount specified in § 261.5 (a), the Conditionally Exempt Small Quantity Generator (CESQG) exclusion criteria. This existing regulation excludes those facilities from Subtitle C that generate no more than 100 kilograms per month of hazardous waste or 1.2 metric tons per year. We separated the survey data from the CESQG facilities because under the Federal RCRA regulations, they could continue to send their small waste quantities to nonhazardous disposal facilities. Including these very small waste quantities in our risk modeling could inappropriately bias the modeling results toward the higher protective constituent concentrations. Therefore, it would be inappropriate to include these small volumes in the risk modeling to develop the regulatory limits, since these wastes would be excluded from the regulation. Also, including these small volumes in the modeling would bias the results towards higher protective limits because, all other things being equal, small volumes result in lower estimated risk and therefore higher protective levels. Further, even if all the CESQG facilities' wastes are hazardous, they could continue to manage them in a municipal solid waste landfill, in accordance with appropriate individual state requirements. Twelve facilities reported that they generated less than 1200 kilograms per year of hazardous and nonhazardous wastes combined. We did not use the data for these 12 for any of the risk assessment modeling because the generators of these conditionally exempt quantities could continue to manage their wastes as they are currently managing them even if the wastes were listed.

Next, we compiled separate waste quantity distributions for waste solids and waste liquids. We also accounted for co-management scenarios as reported in the survey responses. Co-management scenarios are: (1) Waste solids or waste liquids generated at a single paint facility that are disposed at the same off-site management unit, and (2) waste solids or waste liquids from different paint facilities that are sent to the same off-site waste management unit. Each of these combinations results in larger paint manufacturing waste quantities being associated with disposal at particular waste management units. We combined these quantities for 14 waste solid co-management scenarios.

At this point, the waste solids quantity distribution consisted of quantities of nonhazardous off specification product waste, nonhazardous emission control dust, nonhazardous water/caustic sludge, nonhazardous wastewater treatment sludge and nonhazardous solvent sludge sent to nonhazardous landfills. All waste solid quantities from any of the surveyed facilities that did not meet the conditionally exempt small quantity generator exclusion were included. The waste solids quantity distribution had 57 entries for single and co-managed waste streams. In addition to this quantity distribution that combined all the types of waste solids (combined waste solids), a second quantity distribution was constructed that contained only nonhazardous emission

control dust sent to nonhazardous landfills. The emission control dust only distribution was constructed similarly to the manner in which the combined solids quantity distribution was constructed. It did not include the conditionally exempt small quantity generator facilities data and co-management of wastes was considered. The emission control dust only distribution was input into the risk model with an accompanying low moisture content to represent a worst-case scenario for wind blown materials that could be released from the nonhazardous landfill.

We created three separate waste liquid distributions in the same manner as the solids distributions to correspond to the modeling scenarios for liquids. Initially, any CESQG facilities that generated waste liquids were eliminated from consideration. The first waste liquid distribution contained washwater cleaning liquid quantities sent off-site to a CWT. We combined waste liquid quantities where we found co-management scenarios. We used this quantity distribution to evaluate washwater cleaning liquid stored in uncovered off-site tanks at CWTs. Next, the surface impoundment waste liquid quantity distribution was exactly the same as the distribution of all quantities of washwater cleaning liquids that sent to off-site CWTs. Because surface impoundments, when they exist, are a part of the CWT's treatment process, we assumed that quantities of waste liquids sent off-site to CWTs could be treated in unlined surface impoundments as well as in tanks. The third liquids quantity distribution consists of the largest washwater cleaning quantity reported in the survey. This single quantity was used to conduct a conservative risk assessment screening for exposure to emissions from waste liquids in uncovered on-site treatment tanks.

To summarize, we assembled five separate quantity distributions using the survey response information.

- One distribution consisted of all the survey quantities of nonhazardous combined waste solids from: nonhazardous solvent cleaning sludge, nonhazardous washwater cleaning sludge, nonhazardous waste water treatment sludge, nonhazardous emission control dust and nonhazardous off specification product. This distribution called, ''combined solids'' was used for risk analysis as a sludge-like material in a nonhazardous landfill.
- The second distribution consisted of all nonhazardous emission control dust quantities only. This distribution was used for risk assessment modeling as a dust-like material going to a landfill.
- The third distribution was a liquids distribution that consisted of all nonhazardous liquid quantities of nonhazardous washwater cleaning liquid that were disposed in off-site tanks at CWTs. This liquids distribution was used for risk modeling of waste liquids being sent to uncovered off-site treatment tanks.
- The fourth quantity distribution was exactly the same as the one above, but the target management unit was a surface impoundment instead of a tank.
- The last quantity used for modeling was a single quantity, the highest washwater cleaning liquid quantity managed in uncovered on-site treatment tanks as reported in the survey. This was used to evaluate risks from waste liquids managed in on-site storage and treatment tanks.

Each of these quantity distributions was used in the process of modeling the risk to human and environmental receptors from the disposal of waste solids and liquids in nonhazardous landfills, tanks and surface impoundments. The next section describes the risk assessment approach and process in detail.

E. What Risk Assessment Approach Did EPA Use to Determine Allowable Constituent Waste Concentrations?

1. Which Factors Did EPA Incorporate Into Its Quantitative Risk Assessment?

In making listing determinations, the Agency considers the listing criteria required in 40 CFR 261.11. The criteria provided in 40 CFR 261.11 include eleven factors for determining ''substantial present or potential hazard to human health and the environment.'' Nine of these factors, as described generally below, are directly incorporated into EPA's completion of a risk assessment for the waste streams of concern:

- Toxicity (§ 261.11(a)(3)(i)) is considered in developing the health benchmarks used in the risk assessment modeling.
- Constituent concentrations that pose a hazard to human health are determined in the risk assessment (§ 261.11(a)(3)(ii)).
- Waste volumes (§ 261.11(a) (3)(viii)) are used to define the initial conditions for the risk evaluation.
- Potential to migrate, persistence, degradation, and bioaccumulation of the hazardous constituents and any degradation products (sections 261(a)(3)(iii), 261.11(a)(3)(iv), 261.11(a)(3)(v), and 261.11(a)(3)(vi)) are all considered in the design of the fate and transport models used to determine the concentrations of the contaminants to which individuals are exposed.
- Finally, we consider two of the remaining factors, plausible mismanagement as discussed in the previous section and other regulatory actions as discussed in Section IV on the proposed listing determinations ((§§ 261.11(a)(3)(vii) and 261.11(a)(3)(x)) in establishing the waste management scenario(s) modeled in the risk assessment.

EPA conducted analyses of the risks posed by the waste streams evaluated for this listing to determine the concentrations of constituents that if found in paint production wastes would meet the criteria for listing set forth in 40 CFR 261.11(a)(3). This section discusses the human health risk analyses and ecological risk screening analyses EPA conducted to support our proposed listing determinations for paint and coatings production wastes. We consider the risk analyses in developing our listing decisions for each of the waste streams. The risk analyses we describe in this section are presented in detail in the Risk Assessment Technical Background Document for Paint and Coatings Listing Determination which is located in the docket for today's proposed rule.

2. How Did EPA Use Damage Case Information?

We also considered whether any damage cases exist that indicate impacts on human health or the environment from improper management of the wastes of concern, which is required under the listing regulations (§ 261.11(a)(3)(ix)). Damage incidents might be useful in not only establishing whether there was any impact on human health or the environment from improper management, but such incidents might also provide some information on plausible mismanagement practices, and on the potential of the waste constituents to migrate, persist, or degrade in the environment. We compiled damage incidents involving paint production wastes and paint constituents, including paints disposed of by non-paint manufacturing facilities. We found approximately 21 incidents that appear to involve the release of constituents from the management of paint product wastes either at the site of paint manufacture, or at off-site facilities. We also found damage incidents for the disposal of paint wastes by end-users, and numerous other possible incidents for which we did not have adequate information to determine the type of facility or the nature of the waste involved. A report summarizing the results of this search is in the docket for today's rule (Damage Incident Compendium and Report, July 2000).

A number of the data sources contained information on potential problems related to management or use of paint materials at a variety of sites. The information of most potential utility came from the Superfund Public Information System (SPIS). The SPIS contains data from the Record of Decision System (RODS), which

document remediation actions as sites on the National Priority List (NPL), and the Comprehensive Environmental Response Compensation and Liability Information System (CERCLIS), which contains other information on potential and actual Superfund sites. Information from other sources proved to be less useful. For example, a search of the Right-to-Know network database (RTK) provided some matches for paint as a pollutant in the database of civil cases filed by the Department of Justice on behalf of EPA, however these included violations of RCRA permitting, storage, and reporting requirements, rather than disposal problems, or violations of the CAA or CWA. The Defense Technical Information Center database provided information on defense installations on the NPL and slated for closing, however these appear to be end users, not paint manufacturers.

EPA believes the damage cases have limited utility for determining current plausible mismanagement scenarios. The vast majority of damage cases (especially Superfund sites) were from sites that operated prior to implementation of the current RCRA regulations, and generally reflect management practices that no longer occur (such as an in ground solvent pit, buried crushed drums and dumping liquids in trenches). We believe these past damage incidents do not represent current waste management practices by the paint manufacturing industry. This is supported by the results from the 3007 Survey, which indicate that manufacturers are coding and managing many wastes as hazardous, especially some of those likely to have the greatest solvent content. For example, all facilities that reported solvent cleaning wastes reported them to be hazardous, except for one that was sent to fuel blending. Therefore, we expect that waste management practices have changed, since the promulgation of the RCRA regulations, including the addition of a number of organics to the Toxicity Characteristic in 1990 and the listings for certain waste solvents (F001 to F005) in 1980 (and as revised in 1985).

In most cases, the available damage incident data rarely indicated the composition of the paint or paint manufacturing waste, nor the source of the waste. Instead, the data depicted the material or waste in general terms, such as ''paint,'' ''paint manufacturing waste,'' or ''sludges.'' Thus, the databases did not categorize the damage incidents involving paint manufacturing wastes into the specific waste categories of interest (solvent cleaning wastes; water/caustic cleaning wastes; wastewater treatment sludge; emission control dust or sludge; and off-specification production wastes) nor allow us to determine concentrations above which paint manufacturing wastes could pose a hazard. Thus we are unable to directly attribute contamination observed from the mismanagement of paint manufacturing wastes to those the wastes that are specifically addressed by this proposed listing.

Even if historical problems could be traced to paint materials, they are not very useful in assessing the potential risks for paint production wastes as they are currently generated. The damage incidents may represent the potential for the migration, mobility, and persistence of constituents in paint manufacturing wastes. The damage cases do provide some anecdotal information in support of a conclusion that some paint manufacturing wastes may yield environmental contamination when managed in the ways that lead to the damage cases. However, because the wastes in the damage cases may include wastes now managed as hazardous, and because the cases may reflect management scenarios we do not believe are currently common or plausible, it is difficult to use them to reach conclusions as to which of the wastes under evaluation in today's proposal may pose significant risks. Certainly it is difficult to use damage cases to ascertain at what concentration the paint manufacturing wastes under evaluation may pose such risks. Thus, while the damage cases supports that some paint manufacturing wastes may sometimes pose risks, EPA is relying upon its quantitative risk assessment in formulating today's proposal.

3. Overview of The Risk Assessment

For a concentration-based listing, EPA is proposing to calculate the concentration levels, or ''listing levels'' in the waste at or above which a waste would be considered hazardous. Risk assessment is used to identify the concentrations of individual constituents that can be present in each waste stream and remain below a specified level of risk to both humans and the environment.

To establish these listing levels, the Agency (1) Selected constituents of potential concern in waste, (2) evaluated plausible waste management scenarios, (3) calculated exposure concentrations by modeling the release and transport of the constituents from the waste management unit to the point of exposure, and (4) calculated waste concentrations that are likely to pose unacceptable risk. In addition, the EPA conducted a screening level ecological risk assessment to ensure that the concentration limits were dually protective of human health and ecological life.

The following sections explain the selection of constituents that we evaluated in the risk assessment and present an overview of the analysis the Agency used to calculate risk-based listing levels for solvent cleaning waste, water and/or caustic cleaning waste, waste water treatment sludge, emission control dust and sludges, and off-specification product. You will find more details of how we selected the constituents of concern in the Listing Background Document. Details of the risk assessment are provided in the document in the docket entitled Risk Assessment Technical Background Document for the Paint and Coatings Listing Determination (hereafter called the Technical Background Document).

4. How EPA Chose Potential Constituents of Concern

Our overall goal in choosing potential constituents of concern was to identify commonly used, potentially hazardous constituents that could pose unacceptable risk if present in mismanaged paint manufacturing wastes. Waste sampling was not practical because we would have had to conduct extensive sampling to adequately represent thousands of variable products and constituents. As an alternative, we chose to rely on published information and environmental databases to select constituents of concern. We believe our review of the literature available on paint formulation and manufacturing combined with our search of specific databases provided representative information on widely used raw materials. In addition, we selected constituents for which we had access to toxicity and fate and transport data to conduct a risk assessment for each potential constituent of concern. We verified and supplemented these sources with information provided by paint manufacturers when the 3007 survey data was available.

We used the following three-phased approach to develop a list of potential constituents of concern. In the first phase, we developed a preliminary list of potentially hazardous constituents in paint formulations which we could readily evaluate for potential risks to human health, and for which we have test methods to detect their presence in waste. In the second phase, we narrowed the list to constituents for which we would conduct a risk assessment. In the third phase, we

added a limited number of constituents to the risk assessment, as additional information became available.

a. *Phase 1: How Did EPA Develop a Preliminary List of Constituents?* We developed a preliminary list of constituents in three steps: first, out of the thousands of constituents that are used as ingredients in paints, we identified a subset of potentially hazardous constituents used in paint formulations; second, we identified those constituents for which we have adequate data to complete a risk assessment so that we could develop a protective concentration level for the listing, if appropriate; finally, we ensured that test methods were available so paint manufacturers would be able to identify the presence and concentration of constituents in their wastes, as necessary.

Initially, we relied on the ''Database of Published Paint Information'' (available in the docket), a computerized database that characterizes paint raw materials. In particular, we used the ''Raw Materials Module'' which contains information on the following types of ingredients that are used to make paints (we believe that these categories cover the vast majority of paint ingredients that could pose a concern):

Additives—Inorganic and organic metal-containing raw material additives such as driers (siccatives), catalysts, stabilizers.

Binders—Organic polymeric compounds used to adhere the pigment particles and other paint ingredients into a film on the surface being painted.

Biocides—Compounds used to kill microorganisms and larger organisms such as insects. Categories of biocides include insecticides, anti-fouling compounds (e.g., for use on ships), fungicides, algaicides, and mildewcides.

Pigments—Insoluble particulates used to give the paint film color as well as structured strength, as well as in some cases imparting corrosion resistance or other properties to paint film.

Solvents—Solvents used both in traditional ''oil'' based (solvent based) paints, as well as those solvents used in waterborne paints.

The constituents in the ''Raw Materials Module'' were identified from an extensive set of reference materials, including textbooks, monographs, articles and Material Safety Data Sheets listed in the ''Bibliography of Documents Module'' of the database. We believe this survey approach allowed us to identify constituents that are used in paint formulations based on a variety of sources. We also emphasized constituents we had reason to believe were more likely to pose a risk to human health and the environment. (For example, we used other governmental sources, such as a National Institute of Occupational Safety and Health (NIOSH) document characterizing hazardous worker exposures in paint manufacturing, as well as our experience in the RCRA program dealing with a variety of hazardous and potentially hazardous constituents.) In the fall of 1999, when we developed the preliminary list of constituents, the Raw Materials Module contained approximately 500 constituents.

In developing the preliminary list of constituents, we also considered other sources that might provide information on specific constituents associated with paint manufacturing facilities. For this, we turned to the Toxics Release Inventory (TRI) data base. Under the Emergency Planning and Community Right-to-Know Act (EPCRA), all paint manufacturing facilities with ten or more employees must report chemical releases if they manufacture, process, or otherwise use any EPCRA section 313 chemicals in quantities greater than the established thresholds. Facilities must report the quantities of both routine and accidental releases. Facilities are required to report quantities only for individual constituents. In the 1997 TRI, a total of 646 facilities in SIC code 2851 reported releasing 115 different constituents into the environment. From these 115 constituents, we identified approximately 60 additional constituents that were not already in the ''Raw Materials Database,'' but were associated with paint manufacturing facilities. While TRI reports of constituent releases cannot be tied directly to the five waste streams in the scope of this rule, TRI releases do tell us that the constituents are used by paint manufacturing facilities, released into the environment, and could potentially be found in the waste streams of concern.

We recognize that the TRI data do not correlate perfectly to the scope of facilities and wastes potentially covered by this listing. For example, the SIC category also includes some facilities that are not paint producers. Also, TRI tracks releases of specific constituents. However, the TRI data do not distinguish whether the releases are hazardous or non-hazardous wastes or whether the constituents are present in a larger matrix with other materials. While TRI does not contain sufficiently detailed information to associate releases directly with paint production, it does provide the best available information source on toxic constituent releases to waste management units and environmental media from facilities within the appropriate SIC code.

Our next critical step in identifying a preliminary list of constituents was to determine which constituents we could readily analyze for potential human health effects and which constituents could be readily tested in wastes. We looked for the following:

Health benchmarks: values used to quantify a chemical's possible toxicity and ability to induce a health effect. Benchmarks are also specific to routes of exposure (ingestion or inhalation) and duration of exposure.

Physical/chemical properties: information used to predict the behavior and movement of constituents in the environment essential to model environmental fate and transport.

Analytic methods: reliable methods available to test for the presence of constituents at concentrations of concern in order to implement a concentration based listing. We identified those constituents that have available SW–846 analytic methods.

We found that of the constituents in the Raw Materials Module and the constituents reported in the TRI, 114 had health benchmarks. We then searched for data on physical/chemical properties and SW–846 analytic methods for each constituent. We finally had a list of 66 constituents with test methods and sufficient data to conduct further analyses. We included the 66 constituents in the 3007 survey and asked respondents to identify which constituents occurred in each of their paint manufacturing waste streams. Table III.E–1 lists the 66 constituents.

TABLE III.E–1.—CANDIDATE CONSTITUENTS FOR RISK ASSESSMENT

Acetone
Acrylamide and acrylamide derived polymers
Acrylonitrile and acrylonitrile derived polymers
Allyl alcohol
Antimony and compounds
Barium and compounds
Benzene
Benzyl alcohol
Butyl benzyl phthlate
Cadmium and compounds
Chloroform
Chromium and compounds
Cobalt and compounds
Copper and compounds
Cyanide
Cyclohexane
Dibutyl phthlate
3-(3,4__Dichlorophenyl-1)1 dimethylurea
Diethyl phthlate
Di (2-ethylhexyl) phthlate
2,4 Dimethylphenol
1,4 Dioxane
Ethyl acetate
Ethylbenzene
Ethylene glycol
Formaldehyde and formaldehyde-derived polymers
Isophorone
Lead and compounds

TABLE III.E–1.—CANDIDATE CONSTITUENTS FOR RISK ASSESSMENT—Continued

M-Cresol
Methanol
Methyl acrylate
Methylene chloride
Methyl ethyl ketone
Methyl isobutyl ketone
Methyl methacrylate and methyl methacrylate derivatives
2,2 Methylenebis (3,4,6-trichlorophenol)
Mercury and compounds
Molybdenum and compounds
M-Xylene
Naphthelene
N-Butyl alcohol
Nickel and compounds
Nitrobenzene
2-Nitropropane
O-Cresol
O-Xylene
P-Cresol
Pentachlorophenol
Phthalic anhydride
Phenol
Selenium and compounds
Silver and compounds
Styrene and styrene-derived compounds
Tetrachloroethene
Tin and compounds
Toluene
Toluene diisocyanate
1,1,1 Trichloroethane
1,2,4-Trichlorobenzene
Trichloroethene
2,4,6 Trichlorophenol
Vanadium and compounds
Vinyl acetate and vinyl acetate derived polymers
Vinylidene chloride and vinylidene chloride derived polymers
Xylene (mixed isomers)
Zinc and compounds

b. *Phase 2: How Did EPA Select Potential Constituents of Concern for the Risk Assessment?* Before we began our initial risk assessment analyses in the fall of 1999, and before survey data were available, we selected a subset of 34 constituents (from the 66) to use in developing the risk assessment structure. We believe that it is important to select toxic constituents that are likely to occur across a wider variety of waste streams so that the concentration-based listing will capture more wastes of concern. While it is possible that infrequently occurring constituents could pose risks, we believe it is most effective to address risks from constituents that could be associated with more paint production wastes and occur in larger volumes. To select these constituents, we looked for some indicators that could give us insight into which were more widely used or more likely to occur in wastes. We started with the 66 constituents identified in Table 1 and looked at 1997 TRI data first to find constituent volumes released to waste management units and environmental media. We then looked at RCRA Biennial Reporting System (BRS) data to find how frequently paint manufacturing facilities generated hazardous wastes that contain each of the 66 constituents. (Hazardous waste generators are required to report biennially the listed and characteristic hazardous wastes that they generate by waste code—the Biennial Reporting System. Each hazardous waste code for listed or TC characteristically hazardous wastes is associated with specific hazardous constituents that are the basis of the listing.) We looked at the number of paint manufacturing facilities that reported generating hazardous waste codes associated with the specific constituents we were interested in. While we know that these wastes are already hazardous, we looked at these data as possible indicators of constituents that might be associated with nonhazardous wastes at paint manufacturing operations. We also considered TRI data for two reasons. First, TRI ''releases'' cover a broader range of materials than ''hazardous wastes'' (in the BRS) and include non-hazardous wastes that are not reported to BRS. Also, TRI data provide some indication of the relative amounts or frequency that constituents may be released into the environment.

First, we looked at TRI for the volume of releases of each constituent from facilities in SIC 2851 to on-site landfills, solidification/stabilization, wastewater treatment, and offsite landfills and surface impoundments. We evaluated releases to these units first, because, while we did not yet have the results of the 3007 survey, these management units correspond most closely to waste management scenarios we generally address for listing purposes. We initially identified a list of 20 constituents out of the 66 with the largest volume releases to these management units.

Second, because solvents were heavily represented among the first 20 constituents we identified from TRI data, we focused on the remaining constituents that fell into other use categories, such as pigments, binders, and biocides. We believe that it is important to have a broader representation of other types of constituents, besides solvents, which are used in paint formulations. (We note that some constituents serve more than one purpose in paint formulations.) We considered total TRI releases (including releases to air, surface waters, etc., in addition to releases to the waste management units listed above) for each of the remaining constituents. We also looked at the number of RCRA facilities that are likely to generate the constituent in hazardous waste, based on BRS data. This resulted in adding 13 constituents, including all eight remaining pigments, binders and biocides that had any TRI releases and 5 that were only reported in the BRS.

Third, while we did not have TRI data available for two additional constituents, cobalt and tin, we added them based on our knowledge that they are commonly used as pigments in paints.

We initially identified 35 constituents that met our screening criteria. However, we later dropped one of the 35 constituents (phthalic anhydride) because it degrades too rapidly to model. In summary, we used the 34 constituents listed in Table III.E–2 to develop the risk assessment structure and draft analysis.

c. *Phase 3: How Did EPA Choose Additional Constituents for The Risk Assessment?* Before we completed the risk modeling, we added a limited number of constituents to the 34 we chose initially. We looked at three groups of constituents. First, since we had chosen the initial group of constituents in the fall of 1999, we identified five additional constituents (from the list of 114 constituents with health benchmarks) that met the criteria for risk assessment (the Agency's Office of Research and Development identified physical/chemical properties and SW–846 methods are available). Second, we had 3007 survey responses reporting which of the 66 constituents (candidates for modeling, including the 34 we used to develop the risk assessment modeling structure) occur in non-hazardous waste streams. Finally, we found TRI data for one additional constituent on the list of 66. Ultimately, we chose additional constituents based on the 3007 survey reporting.

First we considered the five constituents (from the initial list of 114, but not included in the 66) for which we received later information identifying physical/chemical properties, and SW–846 methods: these were acetophenone, chlorobenzene, ethyl ether, p-chloro-meta-cresol, and tetrachloroisophthalonitrile. As with the first group of 34 constituents, we considered the available data for further evidence associating the constituents with paint manufacturing facilities. Acetophenone and chlorobenzene are TRI chemicals but had no TRI releases reported by SIC 2851 facilities. Ethyl ether, o-chloro-meta-cresol, and tetrachloroisophthalonitrile are not covered by TRI. In the BRS, four SIC 2851 facilities reported hazardous wastes that were listed, at least in part based on chlorobenzene. We found no BRS reporting of hazardous wastes associated with the other four constituents.

Then, we also considered the additional information reported in the 3007 survey. The survey listed the 66 constituents that were candidates for

risk assessment and asked respondents to identify which constituents occur in each of their waste streams, both hazardous and non-hazardous. While response to this question was mandatory, the responses were based on existing knowledge or waste testing already available to the respondent. In discussing these results below, ''reporting frequency'' or ''frequency of occurrence'' refers to the number of times each constituent was reported to occur in a non-hazardous waste stream by a facility. The numbers reflect the total number of waste streams that were reported with identified constituents, not the number of facilities. Some waste streams were reported without any associated constituents.

In survey data, respondents identified 45 of the 66 constituents occurring in their non-hazardous waste streams. Frequency of occurrence ranged from 127 for barium to one for o-xylene and benzyl alcohol. Twenty-nine of the 34 constituents we chose initially for modeling were among the 45. We initially modeled the top 22 in terms of reporting frequency and out of the top 26, we modeled 24. Five of the constituents we modeled were not identified by respondents as occurring in non-hazardous waste streams. These results support the interpretation that our initial approach to choosing constituents was appropriate.

Finally we considered trichloroethene, which was one of the 66 constituents, but was not initially chosen for risk modeling. We found there were TRI releases reported for trichloroethene, so we also looked at survey responses to find how often respondents identified it occurring in their waste streams. We found that trichloroethene was not reported in either non-hazardous or hazardous waste streams. We compared this to responses for several other widely used solvents. Several were reported in both non-hazardous and hazardous waste streams and the frequency of reporting was significantly higher in the hazardous waste streams. For example, toluene was reported in 38 non-hazardous waste streams and 249 listed hazardous waste streams. Xylene was reported in 33 non-hazardous waste streams and 246 listed hazardous waste streams. Ethylbenzene was reported in 6 non-hazardous wastes and 126 listed hazardous waste streams. Comparing ''no reported occurrence'' of trichloroethene in either non-hazardous or hazardous waste streams to the non-hazardous/hazardous reporting for other widely used solvents led us to conclude that trichloroethene is less likely to be a frequently occurring constituent in non-hazardous waste streams than other constituents that actually were reported in the survey as occurring in non-hazardous wastes.[12] Therefore, we did not model trichloroethene. It is not a constituent considered as a basis for the concentration based listing.

We decided to add additional modeling constituents from those identified in the survey results rather than any of the five constituents for which we received additional data that would allow us to conduct risk modeling. We have no TRI data for any of the five constituents with late-arriving information. BRS data provided some evidence that chlorobenzene is associated with hazardous wastes from four paint facilities. In contrast, the survey provides actual reporting from paint manufacturers on the occurrence of constituents in their nonhazardous waste streams. We believe that BRS reporting associated with chlorobenzene at four facilities is less compelling than reporting frequency in the survey as a basis for adding additional constituents for risk modeling.

Therefore, we added the following six constituents for risk modeling based on reported frequency of occurrence in non-hazardous waste streams: butyl benzyl phthalate with 26 occurrences; acrylamide with 22 occurrences; benzene with 11 occurrences; and m-, o-, and p-cresol isomers with 14 occurrences (for m-cresol and o-cresol). We modeled all three cresol isomers because they are sometimes difficult to distinguish with available sampling methods and they often occur together. Also, all three isomers are TC constituents.

In summary we modeled 43 constituents. There are several points to note concerning the constituents that we modeled:

- There are 11 metals on our list of modeling constituents, and we actually modeled 14 because we modeled elemental mercury and divalent mercury, chromium III and chromium VI, and nickel and nickel oxide. Metals exist in a wide variety of chemical species, and this may be an important factor in assessing the fate, mobility, and toxicity of metals in our risk analysis. For the metals noted above, we have sufficient information on mobility and toxicity to model different species. Metals are present in paint manufacturing wastes as simple metal salts, or the metal could be part of a larger organic or inorganic metal compound. For example, for lead there are a number of compounds used in paints, such as lead naphthenate, lead molybdate chromate, lead sulfate, lead chromate, lead oxide, etc. We believe that by modeling these 14 metals, we are in fact representing a broader range of compounds that are likely to be used in paints. As discussed in the Section III.E.3 (see discussion on uncertainty in human health risk results), we recognize that the ionic forms of metals we modeled may over or under represent the mobility of many of these metal compounds. However, given that metal speciation may also change as the constituents move from the waste into the environment, we believe our modeling efforts are a reasonable approach to assessing the risks presented by the metals.
- Fifteen of the constituents are TC constituents. We chose to model these because we were concerned that risk-based levels derived from modeling might be lower than TC concentration levels. We had experience from the petroleum listing where one TC constituent, benzene, was present in the wastes below the TC concentration level and potentially could pose a risk, (see 63 FR 42110, August 6, 1998). In addition, because we intended to conduct a multi-pathway risk assessment that would take into account direct and indirect risks from air and ground water as well as from ingestion of ground water, it was possible that risk-based concentrations for other exposure pathways might be lower than those for ingestion of ground water alone, which is the basis for the TC.
- Fifteen of the constituents are pigments; ten are biocides; 17 are solvents; five are binders; and two are driers (the numbers do not add up to the total number modeled because some constituents have more than one purpose).
- With the addition of the six new modeling constituents, we modeled 34 constituents with 3007 survey reported waste stream occurrences ranging from 127 to two. We modeled the top 30 in terms of reporting frequency in waste streams, with the exception of acetone (discussed below). We also completed modeling for the five constituents modeled initially but not reported in the survey, because there is a possibility that they may occur in the total universe of paint manufacturing wastes.

We did not model acetone, although it was reported at 11 occurrences, because it was removed from the TRI in 1995. It was removed from the TRI because ''* * * acetone: (1) Cannot reasonably be anticipated to cause cancer or neurotoxicity and has not been shown to be mutagenic and (2) cannot reasonably be anticipated to cause adverse developmental effects or other chronic effects except at relatively high dose levels.'' (**Federal Register:** June 16, 1995 (Volume 60, Number 116), pp. 31643–31646.) On the same day, EPA also added acetone to a list of compounds excluded from the definition of a VOC under Title I of the Clean Air Act, based on an Agency determination that acetone has a negligible contribution to tropospheric ozone formation.

[12] Also, generators should know if trichloroethene is in their wastes because it is a TC constituent (D040, trichloroethylene).

Table III.E–2 lists all the constituents that we modeled, the use category that they fall under and their frequency of occurrence when they were reported in non-hazardous waste streams.

TABLE III.E–2.—CONSTITUENTS MODELED FOR RISK ASSESSMENT

Constituent	Purpose	Weighted frequency of occurrence in non-hazardous waste streams
Barium [1]	Pigment	127.4
Zinc	Pigment/Biocide	126.8
Vinyl Acetate	Solvent/binder	98.4
Ethylene Glycol	Solvent	90.0
Copper	Pigment/Biocide	86.7
Chromium III [1]	Pigment	84.6
Chromium VI [1]		(Identified as chromium in the survey)
Cobalt	Pigment/drier	73.0
Styrene	Binder	63.0
Formaldehyde	Biocide	62.8
Lead [1]	Pigment/drier	58.2
Antimony	Pigment	45.9
Silver [1]	Pigment/biocide	45.6
Methanol	Solvent/biocide	40.0
Toluene	Solvent	38.8
Methyl Ethyl Ketone [1]	Solvent	36.9
N-Butyl Alcohol	Solvent	35.6
Acrylonitrile	Binder	35.0
Cadmium [1]	Pigment	34.5
Xylene	Solvent	33.5
Nickel	Pigment	28.3
Nickel oxide	Pigment	(identified as nickel in survey)
Phenol	Solvent/biocide	28.0
Methyl Methacrylate	Binder	27.2
Butyl Benzyl Phthalate [2]	Solvent	26.6
Acrylamide [2]	Binder	22.5
Dibutyl Phthalate	Solvent	22.0
m-Cresol [1,2]	Solvent	7.45
o-Cresol [1,2]	Solvent	7.45
p-Cresol [1,2]	Solvent	
Methyl Isobutyl Ketone	Solvent	11.8
Benzene [1,2]	Solvent	11.0
Tin	Pigment	9.0
Mercury [1]	Pigment/biocide	7.6
Divalent mercury	Pigment/biocide	(Identified as mercury in the survey)
Ethylbenzene	Solvent	6.1
Selenium [1]	Pigment	5.1
Di(2-ethylhexyl) Phthalate	Solvent	2.2
Chloroform [1]	Biocide	
Methylene chloride	Solvent	
2,4 dimethylphenol	Biocide	
Pentachlorophenol [1]	Biocide	
Tetrachloroethylene [1]	Solvent	

[1] Indicates Toxicity Characteristic (TC) constituents.
[2] Indicates constituents added to the risk assessment based on frequency of occurrence reported in the 3007 survey.

5. What Was EPA's Approach to Conducting Human Health Risk Assessment?

Our human health risk analysis for the paint and coating waste streams estimates the concentrations of individual constituents that can be present in each waste stream and provide a specified level of protectiveness to human health and the environment. The human health risk assessment for the paints and coatings listing determination evaluates waste management scenarios that may occur nationwide. A national analysis that captures variability in meteorological and hydro-geological conditions was selected for this listing because paint manufacturing is widespread, and facilities that generate the waste streams of interest are found nationwide.

This risk assessment is intended to limit the risk to individuals who reside near waste management units used for paint manufacturing waste disposal by determining the concentrations of particular constituents that can be managed in paint manufacturing wastes and remain below a specified individual target risk level.

For this listing, we generated risk-based concentration limits in waste streams by estimating the concentration of a constituent that can be managed in the waste streams reported in the 3007 survey and remain below a target risk level for both cancer risk and noncancer human health hazards to 90% of the individuals living near waste management units handling paint manufacturing wastes. Human health impacts are expressed as estimates of excess lifetime cancer risk for individuals (called ''receptors'') who may be exposed to carcinogenic contaminants and as hazard quotients (HQ's) for those contaminants that produce noncancer health effects. Excess lifetime cancer risk is the probability of an individual developing

cancer over a lifetime as a result of exposure to a carcinogen. A hazard quotient is the ratio of an individual's chronic daily dose of a noncarcinogen to a reference dose (an estimate of daily exposure that is likely to be without appreciable risk or deleterious effects over a lifetime) for exposures to the noncarcinogen. For this listing, the Agency selected a target risk level for excess lifetime cancer risk for individuals exposed to carcinogenic (cancer-causing) contaminants of 1 chance in 100,000 (1E–05). For constituents that are non-carcinogens, the Agency selected the measure of safe intake levels to projected intake levels, a hazard quotient (HQ), of HQ=1.

The use of these risk levels is consistent with the EPA's hazardous waste listing policy and the target risk levels used in past hazardous waste listings (e.g., see 59 FR 24530, December 22, 1994). Risk levels themselves do not necessarily represent the sole basis for a listing. There can be uncertainty in calculated risk values and so other factors are considered in conjunction with risk in making a listing decision. EPA's current listing determination procedure uses as an initial cancer-risk ''level of concern'' a calculated risk level of 1E–05 and/or environmental risk quotients (EQ's) of 1 at any one point in time. Waste streams for which risks are calculated to be 1E–04 or higher, or 1 HQ or higher for any individual non carcinogen, or non carcinogens that elicit adverse effects on the same target organ, generally will be considered to pose a substantial present or potential hazard to human health and the environment and generally will be listed as hazardous waste. Such waste streams fall into a category presumptively assumed to pose sufficient risk to require their listing as hazardous waste. However, even for these waste streams there can in some cases be factors which could mitigate the high hazard presumption. Listing determinations for waste streams with calculated high-end individual cancer risk levels between 1E–04 and 1E–06 always involve assessment of additional factors. For today's proposed listing there are several factors that we considered in setting the risk level of concern, these included: (1) Certainty in the risk assessment methodology, (2) coverage by other regulatory programs, (3) damage cases, and (4) presence of toxicants with unquantifiable risks. We believe a target cancer risk level of 1E–05 and an HQ of 1 is appropriate for this listing, but we welcome comments and supporting data if there is a compelling reason for an alternative target.

To calculate listing levels for constituents of concern, we needed to determine what concentrations at the point of exposure would be associated with levels in the waste for each waste stream and waste management unit. We used three types of analyses to determine the risks associated with the management of paint manufacturing wastes: (1) A probabilistic analysis for all waste management scenarios; (2) a deterministic analysis for all waste management scenarios, and (3) a bounding analysis for on-site management of waste waters in treatment tanks. The results of the bounding analysis demonstrated that given the concentrations of constituents that we expect in paint manufacturing waste the risk generated from paint manufacturing wastes managed in on-site tanks is not significant. The following sections describe the risk assessment.

(1) *Probabilistic Analysis (Monte Carlo Method).* A probabilistic analysis calculates distributions of results (in this case protective waste concentrations for each constituent) by allowing some of the parameters used in an analysis to have more than one value. The model is run numerous times (for this analysis we ran the model 10,000 times) each time with different values selected from the distributions of input parameters. A parameter is any one of a number of inputs or variables (such as waste volume or distance between the waste management unit and the receptor) required for the fate and transport and exposure models and equations that EPA uses to assess risk. In the probabilistic analysis, we vary sensitive parameters for which distributions of data are available. Parameters varied for this analysis include waste volumes, waste management unit size, parameters related to the location of the waste management unit such as climate and hydro-geologic data, location of the receptor, and exposure factors (e.g., drinking water ingestion rates). In some cases, in order to maintain the inherent correlation between parameters, we treat multiple parameters as a single parameter for the purpose of conducting the analysis. We do this to prevent inadvertently combining parameters in our analyses in ways that are unrealistic. For example, we treat environmental setting (location) parameters such as climate, depth to groundwater, and aquifer type as a single set of parameters. We believe that, for example, allowing the climate from one location to be paired with the depth to groundwater from another location could result in a scenario that would not occur in nature.

The probabilistic analysis is conducted using a Monte Carlo methodology. Monte Carlo analysis provides a means of quantifying variability in risk assessments by using distributions that describe the full range of values that the various input parameters may have. Some of the parameters in the probabilistic analysis are set as constant values because (1) there are insufficient data to develop a probability distribution function ; (2) EPA made assumptions to simplify the analysis in cases where such simplifications would improve the efficiency of the analysis without significantly affecting the results; and (3) the analysis has not been shown to be sensitive to the value of the parameter, that is, even if the parameter varies, the resulting risk estimate does not vary significantly. The result of the probabilistic risk assessment is a distribution of risk-based concentration limits or ''listing levels.'' The EPA used the results of the probabilistic risk assessment to determine the regulatory listing levels.

(2) *Deterministic Analysis.* The deterministic method uses single values for input parameters in the models to produce a point estimate of risk or hazard. We used the deterministic analysis to corroborate the results of the probabilistic analysis. For the deterministic analysis, we conduct both a ''central tendency'' and a ''high end'' deterministic risk assessment. These two analyses attempt to quantify the cancer risk or non-cancer hazard for the ''average'' receptor in the population (the central tendency risk) and the risk or hazard for individuals in small, but definable ''high end'' segments of the population (the high end risk). For central tendency deterministic risk analyses, we set all parameters at their central tendency values. For the paint and coatings risk assessment, the central tendency values generally are either mean (average) or 50th percentile (median) values. We use high end deterministic risk analyses to predict the risks and hazards for those individuals exposed at the upper range of the distribution of exposures. EPA's Guidance For Risk Characterization (EPA 1995) advises that ''conceptually, high end exposure means exposure above about the 90th percentile of the population distribution, but not higher than the individual in the population who has the highest exposure,'' and recommends that ''* * * the assessor should approach estimating high end by identifying the most sensitive variables and using high end values for a subset

of these variables, leaving others at their central values.'' As such, for the paint and coatings risk assessment, high end deterministic risk analyses, EPA established a set of the parameters most likely to influence the results of the assessment and set two of these parameters at a time to their high end values (generally 90th percentile values), and set all other parameters at their central tendency. The high-end deterministic analysis results are based on the two most ''sensitive parameters.'' These are the two parameters that when set at their high-end values, generated the highest estimate of risk or hazard. These two most ''sensitive parameters'' vary according to the constituent and pathway evaluated. Appendix C of the risk assessment technical background document shows the two most sensitive parameters for each constituent and pathway. The EPA did not perform a sensitivity analysis on all parameters in this risk assessment. Rather, the parameters we selected to vary in the deterministic analysis were a smaller list based on sensitivity analyses performed on the same models for other listing determinations that determined the most sensitive parameters in our models. For the aboveground pathways, the parameters considered most likely to influence the results were the waste management unit surface area, the distance to the receptor, the meteorological station location, the sorption coefficients for the waste management unit and surficial soil, the receptor's exposure duration, and the volume of paint waste in the waste management unit. For the groundwater pathways, the parameters considered most likely to influence the results included; the distance to receptor well, depth to groundwater, the sorption coefficients, the receptor's exposure duration, and the volume of paint waste in the waste management unit. We did not use the deterministic analysis to develop today's proposed listing levels. The deterministic analysis is discussed in more detail in the Technical Background Document

(3) *Bounding Analysis.* This type of analysis is very conservative but presents a quick and simple way to ''screen out'' potential scenarios of concern. A bounding analysis was used for the on-site tank scenario because, based on previous listing determinations, we did not think volatilization from the small volumes managed on-site was likely to generate a risk of concern. Similar to the deterministic and probabilistic analyses, the results of this risk assessment are the concentration of each constituent that can be managed in a tank and remain protective of human health. To conduct this analysis, the most sensitive or risk-driving parameters in the risk assessment tank model were varied between their high-end and central tendency values. The tank characteristics (i.e., capacity, surface area, and diameter) used in the analysis were based on the tank reported by the facility with the highest waste volume managed in a tank. The tank modeled was a 9000 gallon, aerated waste water treatment tank. For the analysis we assumed there was no biodegradation in the tank. Similar to the deterministic assessment, two high-end parameters were varied at a time to determine the greatest ''high-end'' risk combination. The greatest reported waste volume was always used as one of the high-end parameters in the two parameter combination. The three other high-end parameters were varied between their high-end and central tendency values. These three parameters were; the distance from the waste management unit to the receptor, the duration that the receptor was exposed to the contaminant, and the meteorological location of the waste management unit. Based on the results of this analysis, we determined that the risk of waste water management in on-site tanks is insignificant for all constituents for one of three different reasons: (1) The estimated constituent concentration was greater than 1 million parts per million and therefore was not physically achievable, (2) the estimated constituent concentration was above the constituent's RCRA hazardous waste toxicity characteristic and the waste would already be classified as hazardous, or (3) we determined, based on knowledge of paint formulations, that non-hazardous paint manufacturing waste waters would never contain concentrations of the constituent at the level that may produce a risk (see Section for further discussion).

a. *What Waste Management Scenarios Were Evaluated?* We evaluated four waste management units that represent plausible management scenarios that are likely destinations for paint and coating production waste streams. The modeled units include landfills, surface impoundments, on-site tanks, and off-site tanks. Section III.D describes in detail why these waste management units were selected for evaluation in the risk assessment. The waste management scenarios for each of these units were created using information reported by industry on the management of their non-hazardous paint manufacturing waste streams. In addition, we used information on the national distributions of waste management unit characteristics (e.g., size and waste capacity) collected with surveys conducted for other rulemakings to establish the characteristics of the off-site waste management units.

(i) Type of Waste Management Units and Their Characteristics. We evaluated commercial industrial non-hazardous landfills, surface impoundments, and off-site tanks for the probabilistic and deterministic risk assessment. On-site tanks were also evaluated in a bounding analysis. With the exception of the on-site tanks, each type of waste management unit has a distribution that characterizes the units with respect to capacity and dimension (e.g., area and depth). These dimensions and operating characteristics are important determinants of the extent to which a contaminant may be released from the unit. Each type of waste management unit is assumed to have different operational lifetimes (between 20–50 years) and different lengths of time during which constituents are assumed to be released from the unit (between 30 and 200 years).

For landfills and surface impoundments we evaluated the scenario of disposal in an unlined waste management unit and assessed the impact of the release of leachate from the landfill and surface impoundment to the groundwater. In addition, we assumed that the landfill did not have daily cover and the surface impoundment was open to the air. The primary source of data used to establish the characteristics of landfills and surface impoundments for both the probabilistic and deterministic analysis is our 1985 Screening Survey of Industrial Subtitle D Establishments.[13] There are over 2,850 landfills reported in this survey. Since paint manufacturing facilities reported that their wastes were sent to off-site landfills, the characteristics the sixty-eight landfills reported in this survey to accept wastes in all or in-part from off-site sources were selected for characterizing the landfills included in this assessment.

There were 1,930 surface impoundments reported in the 1985 Industrial D Screening Survey. Twenty-seven of these surface impoundments were not included in the distribution used for this risk assessment because the data were not complete in the survey or the facility indicated that the

[13] Schroeder, K.R. Clickner, and E. Miller, 1987. Screening Survey of Industrial Subtitle D Establishments. Draft Final Report. Prepared for the Office of Solid Waste, U.S. Environmental Protection Agency. Westat, Inc. Rockville, MD.

surface impoundments were only used as backup storage units. A stratified random sample of 200 of the remaining 1,903 surface impoundments was used in the analysis. Data on the surface impoundment total capacity and total 1985 waste quantity were used in the analysis. Surface impoundments were assumed to be operated with varying degrees of aeration. Aeration characteristics were not a parameter reported in the Industrial D survey and in the absence of this data, the distribution of aeration characteristics from the tanks database (described below) was randomly applied to surface impoundments.

For the evaluation of off-site management of waste waters in treatment tanks, a tank database was developed for this analysis that compiled flow rates, treatment methods, and tank volumes. The primary source for these data was EPA's 1986 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (TSDR) Database.[14] Although this database collected information on hazardous waste tanks, this database was used since it is the most comprehensive collection available of information on tank characteristics. Since similar treatment technologies are used for hazardous and non-hazardous waste we believe that the characteristics of non-hazardous tanks is not significantly different from hazardous tanks. This database is a result of a comprehensive survey of 2,626 TSDR facilities, on 1986 waste management practices and quantities. A subset of the data contained information on 8,510 tanks that received wastes from off-site. Since it was not computationally feasible to model all 8,510 of the tanks for this analysis, a sample from the tanks in this survey was used to develop the characteristics of off-site tanks. There were several criteria used in selecting a sample from the tanks in the 1986 survey. Some of the criteria used were: (1) Only those tanks reporting flow rates (demonstrating they were used for waste management) were included in the analysis, (2) only treatment tanks were considered in the analysis and tanks that were closed or covered were not included in the distribution, (3) no reported tanks with a volume the size of a drum or smaller were included since these are likely to be short-term units or containers. From all the tanks that met the above mentioned criteria, a sample of 200 tanks was drawn from the data that comprised the tank distribution. The sampling was conducted to preserve the range and distribution of tanks in the underlying database. To reflect emission characteristics associated with differences within the treatment tank category related to aeration intensity, three different tank categories were identified and modeled: high aerated treatment tanks, low aerated treatment tanks, and nonaerated (quiescent) treatment tanks. Examples of quiescent treatment tanks are clarifiers and filters (such as sand or mixed-media filters). In the absence of aeration, quiescent treatment tanks are still subject to small amounts of agitation during filling and emptying operations if the tank has above-surface intakes. Sorting the tanks in the database into these three categories was done using the data reported in the TSDR category.

(ii) Location of Waste Management Units. Determining the location of waste management units is important for the selection of environmental setting data (e.g., meteorological and hydrological data) for constituent fate and transport modeling. Since we do not know the location of all specific paint production waste disposal, we assumed that waste disposal locations are correlated with the location of the paint production facilities. We also assumed that nonhazardous waste from paint manufacturing facilities is disposed within reasonable transport distances of the facility. Therefore, we created a distribution of locations of paint manufacturing waste treatment and disposal facilities across the United States. The locations of waste management in the distribution are weighted according to the total dollar value of product shipments reported for a State. We assumed that the larger the total dollar value of shipments, the greater the volume of paint production in the State and we weighted the probabilistic analysis accordingly. In other words, the meteorological locations in States with the larger reported dollar value of paint shipments in the probabilistic analysis had more of the 10,000 iterations. The source of information on the dollar value of product shipments is the 1997 Economic Census of Paint and Coating Manufacturing (U.S. Department of Commerce, 1999).[15] The Census reported the dollar value of shipments made by paint manufacturing facilities by State. In all, 36 states reported paint production volumes on a dollar value basis. The Census, however, included only States for which facility data can be reported without disclosing confidential business information. Data cannot be reported if the population of paint manufacturing facilities is so small that confidentiality cannot be maintained if data were reported on a State level. Since the States not included in the 1997 Census may only have a few paint manufacturing facilities, not including these States does not impact this analysis. Locations for modeling were selected first for States according to the volume of paint manufactured and then by the general location of paint manufacturing facilities within the State. The EPA's 1997 Toxic Release Inventory was used to determine the possible location of the paint manufacturing facilities within a State. In many cases the majority of the paint manufacturing facilities were located in several clusters throughout a State. Therefore, in some cases several different meteorological stations and hydrological regimes within a single State were modeled. Forty-nine meteorological stations in 39 states were used in the risk assessment.

(iii) Waste Volumes. In Part III, Section D, we explained how we identified waste volumes reported in the 3007 survey data that represent the distribution of volumes of non-hazardous waste being sent to non-hazardous landfills, surface impoundments, and tanks across the nation. We compiled distributions of waste solids sent to landfills and waste liquids sent to tanks and surface impoundments. Each waste volume has a corresponding weighting factor that represents the number of facilities in the total sampling population that sent a particular waste volume to a particular type of waste management unit. The risk assessment modeling requires the use of volumes going to a waste management unit, therefore the waste quantities here are presented as volumes (in gallons) as opposed to mass (in tons), the waste descriptor that has been used in previous sections of this preamble. For the probabilistic risk assessment the weights were used to determine the frequency a waste volume was evaluated in the 10,000 iterations comprising the Monte Carlo analysis. In general, the waste volumes reported were relatively small when compared to the total waste capacity of the waste management units. For the probabilistic analysis, the volumes of emission control dust going to a landfill range from 40 gallons to 78,650 gallons, the volumes of all the solids going to a landfill range from 5 gallons to 426,739

[14] U.S. EPA. 1987. 1986 National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities Database.

[15] U.S. Department of Commerce. 1999. Paint and Coating Manufacturing: 1997 Economic Census; Manufacturing Industry Series. EC97M–3255A. U.S. Census Bureau, Washington, D.C. August.

gallons, and the range of aqueous wastes that can be managed in either a surface impoundment or off-site tank is from 151 gallons to 104,225 gallons. For the deterministic analysis, the 50th and 90th percentile waste volumes from each of the volume distributions was used. These volumes are shown in Table III.E–3 below.

TABLE III.E–3.—WASTE VOLUMES USED FOR THE RISK ASSESSMENT

Percentile	Emission control dust (gallons/yr)	Combined solids (gallons/yr)	Liquid wastes (gallons/yr)
Minimum	40	5	151
50th	644	375	12,000
90th	58,340	43,270	26,752
Maximum	78,650	426,739	104,225

b. *What Exposure Scenarios Did EPA Evaluate?* Prior to conducting the risk assessment, we had to establish that there is a plausible scenario under which a receptor might be exposed to contaminants managed in paint manufacturing wastes. Establishing this scenario required that we determine: how the waste is managed, how contaminants can be released from the waste management unit, how contaminants can be transported in the environment to a point of contact with a receptor; and how a receptor can be exposed to a contaminant. For the reasons discussed in Part II, Section D, we chose to evaluate the risk attributable to management of paint production wastes in uncovered biological treatment tanks, uncovered and unlined surface impoundments, and uncovered and unlined non-hazardous industrial landfills.

(i) Release Scenarios From Waste Management Units. We determined that releases from all of the waste management units (tanks, landfills, and surface impoundments) can occur through release of vapor emissions to the air. In addition, particulate emissions to the air from solids disposed in landfills is feasible. For the landfill and surface impoundment waste management scenarios, it was also determined that releases could occur through leaching of waste into the subsurface. We assumed that tanks were sufficiently impermeable that they were highly unlikely to release volumes of waste sufficient to pose an unacceptable groundwater risk. Therefore it was not necessary to develop risk-based concentrations for the groundwater pathway. The mechanisms and pathways we evaluated are as follows:

1. Vapor emissions can remain dispersed in the air, or can be deposited through wet and dry deposition. Specifically, we modeled the concentration of vapor phase contaminants in air, the diffusion of vapor phase contaminants into plants, the diffusion of vapor phase contaminants into surface water, wet deposition of vapors onto soils and surface water, dry deposition of vapors onto soils, and dry and wet vapor deposition onto plants.

2. Particulate emissions can remain dispersed in the air or be deposited through wet deposition (in precipitation) or dry deposition (particle settling). We assume that particulates may be deposited onto soil and surface water through both wet and dry deposition, and onto plants through dry deposition.

3. Leachate can migrate through the unsaturated zone to the saturated zone, where contaminants are transported in groundwater to drinking water wells.

4. Constituents deposited onto soils from vapor and particulate emissions can erode into nearby surface water bodies.

(ii) Routes of Exposure. Human receptors may come into contact with the chemicals of concern present in environmental media through a variety of routes. In general, exposure pathways are either direct, such as inhalation of ambient air, or indirect, such as consumption of contaminated food products. For this risk assessment, human receptors may come into contact indirectly with vapors that diffuse into vegetation, particulates that are deposited onto vegetation, or contaminants that are taken up by vegetation from the soil and ingested in fruits and vegetables, as well as exposure to contaminated beef and dairy products derived from cattle which have ingested contaminated forage, silage, grain, and surface soil. Receptors that ingest fish may also indirectly come into contact with contaminants in air-borne vapors and particulates (through vapor diffusion into surface water, vapor deposition onto surface water, and particulate deposition onto surface water) and runoff and eroded soil that has entered the surface water body.

(iii) Receptors Evaluated. Most paint facilities transport wastes generated during paint production to waste management units located off-site. For the off-site waste management units identified in the RCRA 3007 survey (e.g., landfills) it is not uncommon to have residential, recreational, or agricultural land uses surrounding the management unit. As such, we determined that the following receptors reasonably represent the types of individuals that may be located near the waste management units and could be exposed to contaminants in paint production wastes:

- An adult resident,
- The child of a resident,
- A farmer,
- The child of a farmer,
- A recreational fisher.

Some of these receptors might be exposed through several pathways and some might only be exposed through one pathway. Receptors are evaluated for exposures with respect to chemicals present in ambient air (both vapors and particles), soils, groundwater, fruits and vegetables, beef and dairy products, and fish. The magnitude of the exposure received by a receptor is dependant on the chemical and environmental setting modeled. The following sections describe our primary assumptions regarding the characteristics and activities of each of the receptor types, and the routes by which each receptor is exposed.

Adult Resident and Child of the Resident. We assume that an adult and child can reside near the waste management unit. The residential receptors inhale vapors and particulate matter that are dispersed in the ambient air. We assume that household water is supplied to the residential receptors by a private groundwater well that is located near their home. The adult resident and the child of the resident, drink water that comes from the well. We assume that the adult resident inhales vapors that are emitted from the water used for showering. The residential receptors do not ingest foods that are grown in the vicinity of their home, however, they do incidentally ingest surface soil from their yard. Groundwater exposures were only considered for the residential scenario. It was assumed that contaminated groundwater was not used for crop irrigation or stock water for cattle. In addition, groundwater recharge and

subsequent contamination of fish was not considered. In general, the exposure to contaminants through the air pathway and contaminants in the groundwater occurs at very different time scales due to the long transport times associated with most chemicals in the groundwater medium. For example, transport of contamination to a receptor in ambient air can happen within a matter of hours while transport of contaminants to a residential well in groundwater can take hundreds, even thousands of years. As such, we did not add together the exposures from both the air pathway and groundwater pathway. There were a few organic constituents where the contaminant did travel to the receptor well in less than 50 years, however, we did not add together the exposures from these two pathways since the receptor locations for the groundwater and air pathways are different, therefore adding the exposures is not appropriate. We did add together the exposures from different routes for each receptor. For example, for carcinogens, we considered the additive exposure for an adult resident from ingestion of groundwater and inhalation of vapors while showering when it was appropriate.

Adult Farmer and Child of the Farmer. We assume that a farmer raises fruits, exposed vegetables, root vegetables, beef cattle, and dairy cattle in an agricultural field located near the waste management unit. Approximately 42 percent of the exposed vegetables, 17 percent of the root vegetables, 33 percent of the exposed fruits, 3 percent of the protected fruits, 49 percent of the beef, and 25 percent of the dairy products eaten by the farmer are grown/raised on the farmer's agricultural field. We assume that the farmer and the child of the farmer incidentally ingests soil from his/her yard.

Recreational Fisher. We assume that the residential receptor may be a recreational angler. Approximately 33 percent of the fish eaten by the fisher are from a stream located near the waste management unit. The fisher's other characteristics and activities are the same as those of the adult resident.

We establish the locations of all the receptors relative to waste management units based on information obtained from previous national surveys. These surveys are discussed below. Exposure to groundwater occurs through the use of water from drinking water wells, and exposure via non-groundwater pathways occurs through releases to the air. Therefore, ''distance to receptor'' for the groundwater pathways is the distance to the drinking water well that the receptor is using (the ''receptor well''). ''Distance to the receptor'' for non-groundwater pathways is the distance to the residence where the receptor is inhaling air or contacting the soil or the distance to the field where the receptor is growing crops or raising livestock. Consequently, we use different databases to establish ''distance to receptor,'' depending on whether we are evaluating a groundwater or a non-groundwater pathway.

For analysis of the air pathways risks in the deterministic analysis we assume that the receptors live either 75 meters (m) (high end) or 300 m (central tendency) from the waste management unit. The distance of 250 feet (ft) (approximately 75 m) is based on the actual measured distance to the nearest resident for the worst-case facility evaluated in the risk assessment conducted to support the 1990 ''Hazardous Waste Treatment, Storage, and Disposal Facilities-Organic Air Emissions Standards for Process Vents and Equipment Leaks Final Rule'' (55 FR 25454), and was used as distance to the nearest resident for that rulemaking. In the same risk assessment, we identified the receptor distance of 1000 ft (approximately 300 m) as the median distance in a random sample of distances to the nearest residence. For the deterministic analysis, we used the average air concentration and deposition values around the circumference at both 75 m and 300 m. For the probabilistic analysis, we identified the distance of 300 m as the median or central tendency distance from the WMU to the receptor. We then used the 75 m distance as a 10th percentile closest location (high-end) and created a normal distribution of receptor distances to sample from. The lowest and highest receptor distances (0 and 100 percentile) of the distribution were constrained to be between 50 and 550 m. The distance from the WMU boundary to the resident location was randomly selected from this distribution. In addition, the receptors in the probabilistic analysis are located in 16 directions around the entire circumference (360 degrees) of the waste management unit.

For evaluating the groundwater pathway in the deterministic analysis, we assume that a receptor well is located 102 m (high end) or 430 m (central tendency) from the waste management unit, and that the receptor well is located on the centerline of the plume (high end) or halfway between the centerline and the edge of the contaminant plume (central tendency). The 102 m distance is the 10th percentile value in the distribution of distances derived from our 1988 survey of Solid Waste (Municipal) Landfill Facilities. The 430 m value is the 50th percentile value in that same distribution. For the probabilistic analysis, the distance from the waste management unit to the receptor well is based on the complete distribution of distance to the receptor well reported by the survey respondents, and ranges from 0.6 m to 1610 m. For the Monte Carlo analysis we assume that the receptor well is located anywhere within the contaminant plume.

The Technical Background Document for the risk assessment provides a complete discussion of the values of additional parameters that define the characteristics of each receptor, such as the amounts of contaminated food and water they ingest, their inhalation rates, and how long they live near the waste management unit (i.e., their exposure duration).

c. *How did EPA Quantify Each Receptors Exposure to Contaminants?* Exposure is the condition that occurs when a contaminant comes into contact with the outer boundary of the body, such as the mouth and nostrils. Once we establish the concentrations of contaminants at the points of exposure, we can estimate the magnitude of each receptor's contaminant dose. Dose is the amount of contaminant that crosses the outer boundary of the body and is available for adsorption at internal exchange boundaries (lungs, gut, skin). For example, for exposure to a carcinogen through ingestion of contaminated drinking water, dose is a function of the concentration of the contaminant in the drinking water (exposure point concentration), as well as certain exposure factors, such as how much drinking water the receptor consumes each day (the intake rate), the number of years the receptor is exposed to contaminated drinking water (the exposure duration), how often the receptor is exposed to contaminated drinking water (the exposure frequency), the body weight of the receptor, and the period of time over which the dose is averaged. Our primary source of exposure factors is the ''Exposure Factors Handbook'' published by EPA in August 1997. For probabilistic analyses, we used the distributions of exposure factor values provided in the Exposure Factors Handbook. The one situation where we do not develop an expression of dose is the case where we use the Reference Concentration (RfCs) to estimate noncancer hazard for the inhalation exposure route. In this situation, we calculate noncancer hazard from concentration of the contaminant in air

and the RfC, without considering exposure factors other than those inherent in the RfC (e.g., inhalation rate, body weight).

Children are an important sub-population to consider in a risk assessment because they are likely to be more highly exposed to contaminants in the environment than adults. Compared to adults, children eat more food and drink more fluids per unit of body weight. This higher rate coupled with a lower body weight can result in higher average daily dose than adults experience. To evaluate childhood exposure for this analysis, a child of a resident and a child of a farmer whose exposure begins between the ages of 1 and 6 was evaluated. For the probabilistic assessment, a start age was randomly chosen between the ages of 1 and 6. The child was then aged for the number of years defined by the exposure duration. As children mature, however, their physical characteristics and behavior patterns change. To capture these changes in the analysis, the life of a child was divided into several cohorts: Cohort 1 (ages 1–5), Cohort 2 (ages 6 to 11), cohort 3 (ages 12 to 19), and cohort 4 (ages 20 to 70). Each cohort has a discrete value (for a deterministic assessment) and a distribution (for a Monte Carlo analysis) of exposure parameters that are required to calculate exposure to an individual. The exposure parameter distributions for each cohort reflect the physical characteristics and behavior patterns for that age range.

d. *How Did EPA Predict The Release and Transport of Constituents From a Waste Management Unit to Receptor Locations?* We conduct contaminant fate and transport modeling and indirect exposure modeling to determine what the concentrations of contaminants will be in the media that the receptor comes into contact with. These concentrations are called ''exposure point concentrations'' (that is, they are the contaminant concentrations at the point where the receptor is exposed to the contaminants.) There are a number of computer-based models and sets of equations that we use to predict exposure point concentrations. In the following sections we briefly discuss these models and equations and their application in the risk analyses.

(i) Landfill Partitioning Model. The landfill model is designed to simulate the gradual filling of an active landfill and the long-term releases from the active and closed landfill cells. The design assumes that the landfill is composed of a series of vertical cells of equal volume that are filled sequentially. We assumed that each cell requires one year to be filled. The formulation of the landfill model is based on the assumptions that the contaminant mass in the landfill cells might be linearly partitioned into the aqueous, vapor, and solid phases. The partitioning coefficients are based on those reported in literature, and are listed in the risk assessment's Technical Background Document. The model simulates the active lifetime of the landfill (30 years) and continues simulating releases until less than one percent of the initial mass is left or for a total of 200 years, whichever occurs first. We assume that the landfill has minimal controls with no liner and no daily cover. However, we assumed that there is no runoff and erosion from the unit. The cover at closure is a soil cover that still permits volatilization. We used the highest 9-year average leachate concentration predicted by the partitioning model as input into EPA's Composite Model for Leachate Migration with Transformation Products (discussed in Section III.E(b)(vii)).

Based on the design assumptions above, we simulated the annual release of chemical mass by leaching to the unsaturated zone underneath the landfill, volatilization to the air pathway, and particle emissions to the air pathway from wind erosion and truck movement during the active lifetime. It is assumed that the contaminant mass emitted as a particulate from the landfill is sorbed to particles in the waste. The model estimates the emission rate of contaminant mass adsorbed to particle sizes less than 30 micrometers (μm). The amount of contaminant mass emitted is assumed to be distributed between four particle size categories, 30 to 15 μm (40%), 15 to 10 μm (10%), 10 to 2.5 μm (30%), and less than 2.5 μm (20%).[16] While the emission control dust may be comprised primarily of the smaller size particles, we assumed that the waste material becomes mixed with other wastes and soils before being released as a particulate, therefore the particle size distribution used for estimating the particulate releases represent the range of particles sizes for all the wastes that may be in a landfill. We did not attempt to assess possible risks from short-term releases of unmixed dust particles that might occur during initial placement of wastes into the landfill cells. However, we do not believe such releases are likely to be significant for several reasons: (1) Dusts sent to landfills are typically contained, and are thus unlikely to cause large scale releases when placed in a landfill, (2) dust volumes are relatively small, especially in comparison to the size of commercial offsite landfills, and would likely be covered with other wastes at the landfill in a short time period, and (3) significant dusting would be minimized by both typical operating practices at landfills (e.g., dust suppressant activities), as well as regulations controlling air releases (e.g., see: Federal regulations for daily cover for municipal landfills at 40 CFR 258.21; widespread State requirements for cover at non-municipal Subtitle D,[17] and requirements under State Implementation Plans approved pursuant to section 110 of the CAA).

In addition, we simulated losses of mass through both anaerobic and aerobic biodegradation and hydrolysis within the landfill. We did not simulate the transport of constituents from the landfill as non-aqueous phase liquids (NAPL's). However, we do not believe that the waste streams evaluated for the landfill scenario will form NAPL's (see Section IV E). In addition, due to the variability of waste stream characteristics across the paint industry, it is impossible to know the exact composition of the waste matrices (e.g., the constituents present and the exact constituent concentrations), therefore, modeling did not take into account the effect of managing multiple solvents in the same waste stream. The management of multiple solvents in a waste may create a ''co-solvency effect'' where the solubility of a solvent may be increased due to the presence of other solvents.

The partitioning model incorporates other assumptions intended to improve the efficiency of the model. These assumptions are described in detail in the risk assessment technical background document. The assumptions include the lack of lateral transport between cells, simulation of only a single cell and then aggregation of results based on the time each cell is filled, and the assumption that waste is added at a constant concentration at a constant rate.

(ii) Surface Impoundment Partitioning Model. The surface impoundment model simulates the disposal of liquid wastes in an unlined surface impoundment and the releases of chemicals during the lifetime of the

[16] ''Compilation of Air Pollutant Emission Factors,'' AP–42, Section 13.2.5: Industrial Wind Erosion, U.S. Environmental Protection Agency, Office of Air and Radiation and Office of Air Quality Planning and Standards, September 1995.

[17] U.S. Environmental Protection Agency, Office of Solid Waste, State Requirements for Industrial Non-Hazardous Waste Management Facilities, October 1995.

unit. The highest 9-year average leachate concentration is then used as input into EPA's Composite Model for Leachate Migration with Transformation Products (see section vii) which estimates the movement of the plume through the saturated and unsaturated zone over a 10,000 year time period. Runoff and erosion from the unit do not occur because we assume the impoundment is a sink in the watershed. We assume that there is no liner other than native soils and that the unit is not covered. The model assumes that the waste in the impoundment consists of two phases: Aqueous liquid and sediment. The model does not simulate any additional phases, such as non-aqueous phase liquids (NAPL's). However, we do not believe that NAPL formation is likely in the wastes evaluated for this listing (see Section IV E). The model simulates the changes at the bottom of the impoundment over time as settled solids fill pore space in native soils and act to reduce chemical transport to underlying soils and groundwater. In addition, a fraction of each surface impoundment is aerated, which enhances biodegradation and increases volatilization of some chemicals. The surface impoundment is assumed to operate 50 years and then undergoes clean closure (that is, all the waste is removed from the unit). Based on the design assumptions, the surface impoundment module simulates annual release of leachate to the unsaturated zone and volatile emissions to the air. The model does not account for redeposition of volatiles into the unit from precipitation. The model accounts for several biological, chemical, and physical processes including hydrolysis, volatilization, sorption as well as settlement, resuspension, growth and decay of solids, activated biodegradation in the liquid phase (that is, a higher rate based on the amount of biomass present) and hydrolysis and anaerobic biodegradation in the sediments.

(iii) Tank Emissions Model. The tank model simulates time-varying releases of constituents to the atmosphere. The tank unit only has volatile emissions (no particulate emissions) and the tank is assumed to have an impervious bottom so that there is no contaminant leaching. The treatment tank is divided into two primary compartments: a ''liquid'' compartment and a ''sediment'' compartment. Mass balances are performed on these primary compartments at time intervals small enough that the hydraulic retention time in the liquid compartment is not significantly impacted by the solids settling and accumulation. In the liquid compartment, there is flow both in and out of the WMU. Solids generation occurs in the liquid compartment due to biological growth; solids destruction occurs in the sediment compartment due to sludge digestion. Using a well-mixed assumption, the suspended solids concentration within the WMU is assumed to be constant throughout the tank. However, some stratification of sediment is expected across the length and depth of the WMU so that the effective total suspended solids (TSS) concentration within the tank is assumed to be a function of the WMU's TSS removal efficiency rather than equal to the effluent TSS concentration. The liquid (dissolved) phase contaminant concentration within the tank, however, is assumed to be equal to the effluent dissolved phase concentration (i.e., liquid is well mixed). The tank model does not consider separate non-aqueous phase liquid (NAPL) in the tank that might exist if a constituent is above its solubility limit. We do not believe that constituents managed in paint production waste will have high enough concentrations in waste waters to form an oily film layer on top of the tank. As such, we believe the modeling performed with this tank model is appropriate.

(iv) Air Dispersion and Deposition Model. The atmospheric modeling performed for this risk assessment provides annual average estimates of air concentrations of chemicals released from the waste management units and annual deposition rate estimates for vapors and particles at various receptor points in the areas of interest. The chemicals that are emitted are either in the form of volatilized gases or fugitive dust. The simulated air concentrations are used to estimate biological uptake from plants and human exposures due to direct inhalation. The predicted deposition rates are used to determine chemical loadings to watershed soils, farm crop areas, and surface waters. The atmospheric concentration and deposition of chemicals were determined through a steady-state Gaussian plume modeling approach using the Industrial Source Complex-Short Term (ISCST3) model. Each of the waste management unit types were modeled as an area source with ISCST3. ISCST3 provides hourly meteorological data and estimates of contaminant concentration, dry deposition (particles only) and wet deposition (particles and gases) for user-specified averaging periods. Dry deposition of vapors was also calculated, but outside the dispersion model. Annual averaging periods were used for this analysis. These long averaging times are consistent with the use of chronic benchmarks in this analysis. The dispersion model uses information on meteorology (e.g., wind speed and direction, temperature) to estimate the movement of constituents through the atmosphere. Modeling was conducted using five years of hourly data obtained from 49 representative meteorological stations throughout the country. Meteorological stations were selected based on the location of paint manufacturing facilities.

Currently, algorithms specifically designed to model the dry deposition of gases have not been verified for the specific compounds in question (primarily volatile organics). In place of algorithms, we used a transfer coefficient to model the dry deposition of gases. A concern with this approach is that the deposition is calculated outside the model. As a result, the mass that we estimate deposits on the ground from the plume is not subtracted from the air concentrations estimated by ISCST3. This results in a slight non-conservation of the mass in the system.

Due to the complexity of the analysis, it was not computationally feasible to run ISCST3 on an hourly basis for the lifetime of all the unit configurations. To reduce the computational burden, we made several simplifications to the air modeling. The dispersion model is sensitive to the surface area of the waste management unit. In order to make the dispersion modeling computationally feasible, we divided the different waste management unit configurations into area-based bins that represented the distribution of surface areas for each of the waste management unit types. For each waste management unit type, the median area for each bin was input into ISCST3 and modeled at each of the 49 meteorological stations. For tanks, each area-height combination was modeled for each of the 49 meteorological locations. For any specific unit, the median air concentration and deposition values for the bin that most closely represented the specific unit's surface area was used. Another simplification used in the dispersion modeling is that a scavenging coefficient for all gases was used based on approximating the gases as very small particles. This approach eliminates the need for running ISCST3 for each specific chemical, thus reducing the overall runtime. This simplification might lead to underprediction of wet deposition for some gases and over-prediction for others depending on the Henry's Law coefficient of the gas.

(v) Overland Transport Model. Addition of constituents to soils, called constituent loading, can result from atmospheric deposition and overland movement of constituents. The primary loading mechanisms of constituents onto soils is by wet and dry deposition predicted with the dispersion model. This constituent deposition was predicted based on the average air concentration and deposition flux for both the buffer area and the agricultural field. We assumed that there was no erosion and runoff from the WMU to the surrounding soils since we assumed that the landfill and surface impoundment were below grade. However, erosion and runoff (overland transport) were evaluated to predict the movement of deposited contaminants onto agricultural fields and into nearby water bodies. Five constituent losses in the surface soils were considered: (1) Leaching of the chemical due to precipitation; (2) erosion of the chemical laterally along with the soil due to water; (3) runoff of the dissolved chemical with the lateral flow of water; (4) biodegradation of the chemical in situ; (5) volatilization losses of the chemical. The Universal Soil Loss Equation (USLE) was used to estimate soil erosion losses. The USLE is an erosion model originally designed to estimate long-term average soil erosion losses from an agricultural field having uniform slope, soil type, vegetative cover, and erosion-control practices. We used a modified form of the USLE to estimate the mass of soil lost per year per unit from the soils around the waste management unit and deposited in the runoff directly onto the receptor site (agricultural field and residential lot) and into a nearby stream. We assume the receptor location is between the waste management unit and the surface water body. The area around the waste management unit is considered for the purposes of our analysis to be an independent, discrete drainage subbasin that is at steady-state. We estimate the soil erosion load from the subbasin to the surface water body using a distance-based sediment delivery ratio, and consider that the sediment not reaching the surface water body is deposited evenly over the area of the subbasin. Using equations, we estimate contaminant contributions to the surface water body and the receptor soil. Soils were characterized within a 20 mile radius around each meteorological station using data obtained from the 1994 U.S. Department of Agriculture's State Soil Geographic Data Base and other relevant sources that are described in Appendix I of the risk assessment's Technical Background Document.

(vi) Surface Water Model. We assume that fish are exposed to waste constituents in surface water. Specifically our modeling assumes that fish are exposed to contaminants in the water column, contaminants sorbed to suspended solids in the water column, and contaminants associated with the bed sediment in the surface water body. The beef cattle and dairy cows are exposed to both dissolved and suspended constituent concentrations in the surface water. The model accounts for four ways in which contaminants may enter the surface water body: (1) Contaminants may be sorbed to eroded soils that enter the surface water body, (2) contaminants may be dissolved in runoff that enters the surface water body, (3) contaminants may be bound to airborne particles that are deposited on the surface water body, and (4) vapor phase contaminants in air may be deposited on the surface water body in precipitation (that is, wet deposition of vapor phase contaminants). The model also accounts for processes that remove contaminants from the surface water body. These include: (1) Volatilization of contaminants that are dissolved in the surface water body and (2) burial of contaminants in the sediment at the bottom of the surface water body. The model assumes that the impact to the water body is uniform, which is more realistic for smaller water bodies than for larger ones. The model estimates the concentrations of contaminants in the water column and bed sediment. We used the water column or bed sediment concentrations and bioconcentration factors or bioaccumulation factors. The water body used in this analysis is a stream located down gradient of the WMU. Depending on the receptor scenario that is evaluated, the stream is either adjacent to the buffer area (the area that separates the WMU from the human receptor locations) or is located adjacent to the agricultural field on the side farthest from the WMU. For modeling purposes, the stream is shaped as a rectangle 5.5 m wide and as long as the width of the agricultural fields. The assumption is that the stream is a typical third-order fishable stream. The stream segment modeled in this assessment is assumed to be homogeneously mixed with a depth of 0.21 meters (including water column and benthic sediments) and has a flow of 0.5 m/s. This stream is the smallest water body that would routinely support recreational fishing of consumable fish. Because we modeled a small stream with a constant flow rate, the stream scenario is a conservative (environmentally protective) estimate of the constituent concentration in a surface water body that results from soil runoff and air deposition.

(vii) Groundwater Model. We used EPA's Composite Model for Leachate Migration with Transformation Products (EPACMTP) to model the subsurface and transport of contaminants that leach from the waste management units (landfills and surface impoundments) and migrate to a residential drinking water well. We assume that the soil and aquifer are uniform porous media and that flow and transport is described by Darcy's law and the advection-dispersion equation, respectively. EPACMTP accounts for the following processes affecting contaminant fate and transport: Advection, hydrodynamic dispersion, equilibrium sorption by the soil and aquifer solids (both in the unsaturated and saturated zones), and contaminant hydrolysis. EPACMTP does not account for preferential pathways such as fractures, macropores, or facilitated transport (i.e., any chemical process that has the potential to speed the transport of a pollutant beyond what is expected), which may increase the migration of constituents.

The groundwater pathway consists of two components: Flow and transport in the vadose zone (that is, the unsaturated zone directly below the unit), and flow and transport in the saturated zone. The primary transport mechanisms in the subsurface are downward movement along with infiltrating water flow in the unsaturated zone and movement along with ambient groundwater flow in the saturated zone. The advective movement in the unsaturated zone is one-dimensional, while the saturated zone module accounts for three-dimensional flow and transport. The model also considers mixing due to hydrodynamic dispersion in both the unsaturated and saturated zones. In the unsaturated zone, flow is gravity-driven and prevails in the vertically downward direction. Therefore, the flow is modeled in the unsaturated zone as one-dimensional in the vertical direction. It is also assumed that transverse dispersion (both mechanical dispersion and molecular diffusion) is negligible in the unsaturated zone. This assumption is based on the fact that lateral migration due to transverse dispersion is negligible compared with the horizontal dimensions of the WMUs. In addition, this assumption is environmentally protective because it allows the leading front of the constituent plume to arrive at the water table with greater peak concentration.

In the saturated zone, the movement of constituents is primarily driven by ambient groundwater flow, which in turn is controlled by a regional hydraulic gradient and hydraulic conductivity in the aquifer formation. The model does take into account the effects of infiltration from the waste source as well as regional recharge into the aquifer. The effect of infiltration from the waste source is to increase the groundwater flow in the horizontal transverse and vertical directions underneath and in the immediate vicinity of the waste source as may result from groundwater mounding. This three-dimensional flow pattern will enhance the horizontal and vertical spreading of the plume. The effect of regional recharge outside of the waste source is to cause a downward dip in the movement of the plume as it moves in the downgradient groundwater flow direction.

In addition to advective movement along with groundwater flow, the model simulates mixing of contaminants with groundwater due to hydrodynamic dispersion, which acts in the longitudinal, (i.e., along the groundwater flow direction), as well as in horizontal and vertical transverse directions. The rate of movement of contaminants may be strongly affected by sorption reactions in both the unsaturated and saturated zone. The effect of sorption is expressed in a retardation factor, which is directly related to the magnitude of the constituent-specific $_{KD}$ value ($_{K.C.}$ in the case of organdies). Constituents with a zero or low $_{KD}$ (or $_{K.C.}$) value will have a retardation factor of 1, or close to it, which indicates that they will move at the same velocity as the groundwater, or close to it. Constituents with high $_{KD}$ values, such as certain semi volatile organic constituents and many metals, will have high retardation factors and may move many times slower than groundwater. EPA has sometimes used the MINTEQA2 equilibrium speciation model to estimate Kd's for a variety of metals rather than relying solely on field measurements. However, recently a number of technical issues have been raised concerning the model and its application.[18] EPA is in the process of evaluating the model to address those issues. Therefore, we have decided not to use MINTEQA2 for today's proposed rule. Once the evaluation is completed and the issues are satisfactorily resolved, EPA may again choose to use the model in an appropriate form in future rulemakings. For today's proposed rule, we used values for metal Kd's that have been derived from field studies and have been published in the scientific literature. An empirical distribution was used to characterize the variability of Kd for chemical contaminants for which sufficient published data were available. However, for chemical contaminants having relatively few published values, a log uniform distribution was used in which a three log unit (three orders of magnitude) expansion was made around the geometric mean of the data. This was done to better account for the variability most often seen in measurements of Kd and to capture the uncertainty that comes from having limited data. Our use of empirically derived partition coefficients assumes that sorption is linear with respect to concentration (i.e., the Kd isotherm is linear). However, sorption is not unlimited and will tend to level off as groundwater concentrations increase beyond the linear range (i.e., Kd isotherm becomes non-linear). This condition is most likely to occur in the unsaturated zone where dilution is limited, if leachate concentrations are sufficiently high.

(viii) Indirect Exposure Methodology. We use a series of ''indirect exposure equations'' to quantify the concentrations of contaminants that pass indirectly from contaminated environmental media to the receptor. For example, contaminants that are transported in air may be deposited on plants or onto the soil where they may accumulate in forage, grain, silage, or soil that is consumed by beef cattle and dairy cattle. Individuals may then ingest contaminated beef and dairy products. Similarly, contaminants may be transported in groundwater to domestic groundwater wells where the groundwater is extracted and used for showering. The water vapor generated in the shower may be inhaled by the receptor. The indirect exposure equations allow us to calculate exposure point concentrations for these pathways and routes of exposure. The indirect exposure equations we use to conduct this risk assessment are presented in the Technical Background Document for the risk assessment.

e. *What Is The Human Health Toxicity of COC's Identified by EPA?* To characterize the risk from human exposures to the constituents of concern, toxicity information on each COC is integrated with the results of exposure assessment. Chronic human health benchmarks were used in this risk assessment to evaluate potential noncancer and cancer risks. We use reference doses (RfDs) and reference concentrations (RfCs) to evaluate noncancer health impacts from oral and inhalation exposures, respectively. Oral cancer slope factors (CSF's), inhalation unit risk factors, and inhalation CSFs are used to evaluate risk for carcinogens. The benchmarks are chemical-specific and do not vary between receptors (i.e., residents, farmers, recreational fishers) or age groups. We use several sources to obtain human health benchmarks. Health benchmarks for this risk assessment were obtained primarily from the most recent Integrated Risk Information System (IRIS) and the most recent Health Effects Assessment Summary Tables (HEAST). IRIS and HEAST are maintained by EPA, and the values from IRIS and HEAST were used in this analysis whenever available[19]. If IRIS or HEAST chronic benchmarks were not available, we sought benchmarks from alternative sources. Provisional EPA benchmarks, Agency for Toxic Substances and Disease Registry minimal risk levels, California Environmental Protection Agency (CalEPA) chronic inhalation reference exposure levels, and CalEPA cancer potency factors were used when values were not available from IRIS and HEAST. The benchmark for lead is unique. Instead of using the benchmarks described above, the Office of Solid Waste and Emergency Response (OSWER) soil screening level of 400 ppm was used as the benchmark for the air pathways in this analysis. The SSL number developed by OSWER accounts for all identified sources of lead exposure (including background). The soil screening level was derived by predicting the concentration of lead that can be in soils in a child's play area such that a typical child would have an estimated risk of no more then 5% of exceeding a 10 ug/dL blood lead level. In addition, the EPA's drinking water action level for lead of 0.015 mg/L was used for the groundwater pathway. We also used a drinking water action level for the groundwater pathway analysis for copper since an ingestion benchmark was not available.

Appendix Q of the Risk Assessment Technical Background Document contains the toxicological profiles used in our analysis. The studies used as the basis for each of these benchmarks have

[18] Norris, C.H. and C.E. Hubbard, 1999. Use of MINTEQA2 and EPACMTP to estimate groundwater pathway risks from the land disposal of metal-bearing wastes. Prepared for Environmental Defense Fund, Friends of the Earth, Hoosier Environmental Council, and Mineral Policy Center.

[19] We are aware that health benchmarks for several constituents of concern or potential constituents of concern are currently being reevaluated in IRIS. Reviewers should note that if the IRIS health benchmarks change, the Agency would likely use the most current benchmarks as the basis for setting concentration levels.

been reviewed and summaries of these studies, along with reference to the complete studies, are presented in Appendix Q of the Risk Assessment Background Document.

f. *What Are The Results From The Risk Assessment?* We developed concentration limits based on the following waste management unit/waste stream combinations:

- Emission control dust managed in a landfill.
- Combined volumes of emission control dust, sludges from waste water treatment, and solid off-specification production wastes (called ''combined solids'' in the results table) going to a landfill.
- All waste waters managed in a surface impoundment.
- All waste waters managed in tanks.

For the landfill and surface impoundment scenarios we have risk-based concentration limits for the air and groundwater pathways. We assumed that tanks were sufficiently impermeable that they were highly unlikely to release sufficient volumes of waste to pose an unacceptable groundwater risk that therefore it was not necessary to develop risk-based concentrations for the groundwater pathway. Other than mercury, the air pathway is not relevant for metals managed in waste waters because of their low volatility.

The small waste volumes generated by the paint and coatings manufacturing industry resulted in most of the potential constituents of concern not creating an unacceptable risk. For example, the central tendency waste volume for emission control dust is 2.44 m^3 annually (approximately 644 gallons). When compared to the central tendency capacity of a landfill cell (the annual capacity of a landfill over a 30 year life), the landfill cell is more than 1000 times larger. This results in a thousand fold dilution effect for the leachate when waste is placed in a landfill. Another way to put the waste volumes into perspective is to consider that the central tendency emission control dust waste volume reported by the paint and coating facilities comprises only 0.07% of the capacity of a median sized landfill.

Most of the constituents screened out of the air pathway because the predicted concentration limits were either greater than 1 million parts per million (physically impossible) or greater than what the EPA expects to be managed in paint manufacturing wastes. Specifically, out of the 43 constituents evaluated in both the landfill and surface impoundment scenarios, only 5 had air pathway concentration limits below 1 million parts per million (ppm). In the tank scenario, only 3 constituents had protective waste concentrations that were below 1 million ppm.

Table III.E–2 shows the calculated risk-based concentration levels for all the possible constituents of concern in each of the waste stream scenarios evaluated[20]. The results are the total concentration in either mg/kg for solids (landfills) or mg/L for liquids (surface impoundments and off-site tanks) that can be managed in the units and remain protective of human health. The concentration levels in Table III.E–4 represent the probabilistic results at the 90th percentile risk level based on individuals living closest to the waste management unit. In other words, these concentration numbers meet a target cancer risk level of 10–5 or hazard quotient of 1 for 90% of the receptor scenarios we evaluated. As discussed previously, we are attempting to calculate estimates of exposure in the upper end of the distribution (i.e., above 90th percent), while avoiding estimates that are beyond the true distribution. EPA guidance for risk characterizations states that ''the 'high end' of the risk distribution (generally the area of concern for risk managers) is conceptually above the 90th percentile of the actual (either measured or estimated) distribution. This conceptual range is not meant to precisely define the limits of this descriptor, but should be used by the assessor as a target range for characterizing 'high-end risk'.[21]'' Therefore, a high-end estimate that falls within the range (at or above the 90th percentile but still realistically on the distribution) is a reasonable input to a decision.[22]

We are soliciting comment on our use of the 90th percentile risk level, rather than other high-end risk levels, such as the 95th percentile, to set the regulatory concentration. If we used the 95th percentile results, the calculated listing levels would be about a factor of 3 lower. In addition, if we used the 95th percentile results, we would consider adding an additional constituent in the listing for liquid wastes (methanol; see Section IV.A for a list of the constituents we are proposing for listing). Details of the levels calculated using the 95th percentile are given in the Technical Background Document for the risk assessment.

In this listing we are proposing to set the levels at the 90th percentile, because we believe that the 90th percentile levels are protective. We have limited information on constituent levels in wastes because, for the reasons stated earlier, we did not sample waste streams. Thus, we do not know with any certainty that a large fraction of paint production wastes will be close to the levels derived from either the 90th or 95th percentile. Based on the limited data from our survey of the industry, we expect that many of the paint production wastes generated will not approach these concentrations, but will likely be well below the proposed listing levels. Thus, we think that the paint production waste that would remain nonhazardous at the proposed levels would pose risks below that indicated by the benchmark risk-level at either the 90th or 95th percentile.

We are proposing to establish a concentration-based listing that sets a threshold level below which wastes would not be considered hazardous. This is different from the usual listing determinations we have made in the past. In a traditional listing, all wastes meeting the listing description are regulated as hazardous, with no provision to test for levels of hazardous constituents present. In a traditional listing, if we determined not to list a waste, then all of the waste would go unregulated and the risk remains unaffected. A concentration-based listing, however, would regulate the higher risk wastes and potentially leave lower risk wastes unregulated. This means that by setting the listing levels at the 90th percentile, we are ensuring that the residual risk for the unregulated wastes would likely be below the risk associated with the risk based on an assessment of all wastes. Therefore, we believe that using the 90th percentile levels to set the listing levels is appropriate for this concentration-based listing. Note that we also recently proposed to use the 90th percentile risk levels to set listing levels in the listing for two wastes from the dyes and pigments industries (64 FR 40192, July

[20] Reviewers should note that inputs used in he modeling to support today's proposal may change, and minor modifications to the model itself may be made as a result of ongoing internal quality assurance/quality control reviews, internal peer review and public comments. As a consequence, the proposed constituent levels may change as well. Reviewers should bear in mind that levels that increase or decrease sufficiently could result in adding or deleting constituents from the listing, based on whether the risk-based levels are likely to occur in paint production wastes.

[21] ''Guidance on Risk Characterization for Risk Managers and Risk Assessors'', by then Deputy Administrator F. Henry Habicht, 1992.

[22] The distributions are distributions of concentrations that when found in paint production wastes will generate risks of 10–5 or an HQ of 1 for individuals living closest to paint manufacturing waste facilities. The ''90th percentile'' then is the concentration in paint manufacturing waste at which 90% of the individuals living closest to paint manufacturing waste management facilities will be protected to these levels.

23, 1999); this was also a concentration-based listing that established a threshold, below which wastes would not be listed. For traditional listing decisions, we considered a range of high-end risk results, including a range of probabilistic results at or above the 90th percentile, e.g., see the proposed listings for wastes from the production of chlorinated aliphatics (64 FR 46476, August 25, 1999) and inorganic chemicals (65 FR 55684, September 14, 2000).

TABLE III.E–4.—CALCULATED RISK-BASED CONCENTRATION LEVELS FOR POSSIBLE CONSTITUENTS OF CONCERN IN PAINT AND COATINGS WASTE [1]

Constituents	Emission control dust (mg/kg)		Combined solids (mg/kg)		Waste waters in surface impoundments (mg/L)		Waste waters in off-site tanks (mg/L)
	Air pathway	Ground-water pathway	Air pathway	Ground-water pathway	Air pathway	Ground-water pathway	
Acrylamide	E	3.1E+02	E	4.7E+02	2.3E+05	1.2E+01	E
Acrylonitrile	1.3E+05	4.3E+01	1.7E+05	6.0E+01	1.9E+04	9.3E+00	6.9E+04
Antimony	E	2.3E+03	E	3.2E+03	M	3.9E+02	M
Barium	E	E	E	E	M	E	M
Benzene	6.3E+05	3.1E+04	7.9E+05	4.7E+04	1.0E+05	5.6E+02	1.9E+05
Butylbenzylphthalate	E	L	E	L	E	E	E
Cadmium	E	1.3E+05	E	2.8E+05	M	3.9E+04	M
Chloroform	E	6.0E+05	E	E	E	1.5E+02	E
Chromium III	E	E	E	E	M	E	M
Chromium VI	E	6.8E+04	E	6.6E+04	M	8.8E+03	M
Cobalt	E	E	E	E	M	E	M
Copper	E	E	E	E	M	E	M
Cresol, m	E	E	E	E	E	2.2E+04	E
Cresol, o-	E	E	E	E	E	2.5E+04	E
Cresol, p-	E	E	E	E	E	2.6E+03	E
Di(2-ethylhexylphthalate)	E	L	E	L	E	E	E
Dibutylphthalate	E	L	E	L	E	E	E
Dichloromethane	E	2.4E+05	E	3.3E+05	E	4.5E+03	E
Dimethylphenol 2,4-	E	E	E	E	E	1.7E+04	E
Divalent mercury	6.0E+05	E	8.7E+05	E	2.5E+04	6.4E+05	E
Ethylbenzene	E	L	E	L	E	1.1E+04	E
Ethylene glycol	E	E	E	E	E	7.9E+05	E
Formaldehyde	E	9.3E+05	E	E	E	8.2E+04	E
Lead	E	E	E	E	M	E	M
Mercury	1.6E+05	E	2.1E+05	E	5.9E+03	E	1.0E+04
Methanol	E	E	E	E	E	2.0E+05	E
Methyl ethyl ketone	E	1.5E+05	E	2.2E+05	E	8.2E+03	E
Methyl isobutyl ketone	E	7.3E+04	E	1.2E+05	E	3.4E+02	E
Methyl methacrylate	E	2.8E+04	E	4.1E+04	E	2.1E+03	E
N-butyl alcohol	E	9.7E+05	E	E	E	4.1E+04	E
Nickel	E	E	E	E	M	E	M
Nickel oxide	E	B	E	B	M	B	M
Pentachlorophenol	E	9.6E+04	E	1.6E+05	E	1.0E+04	E
Phenol	E	E	E	E	E	2.7E+05	E
Selenium	E	2.5E+04	E	3.4E+04	M	6.1E+03	M
Silver	E	E	E	E	M	E	M
Styrene	E	E	E	E	E	4.6E+03	E
Tetrachloroethylene	E	1.4E+04	E	2.1E+04	E	4.8E+02	E
Tin	E	E	E	E	M	E	M
Toluene	E	E	E	E	E	1.2E+03	E
Vinyl acetate	E	G	E	G	E	G	E
Xylene (mixed isomers)	E	L	E	L	E	3.9E+03	E
Zinc	E	E	E	E	M	E	M

[1] Levels represent the 90th percentile protective waste concentration derived from the probabilistic analysis.
L = screened out of the groundwater due to no leachate.
E = risk-based waste concentration exceeds 1 million (1E+06) parts per million.
B = screened out of the pathway due to a lack of a human health toxicity benchmark.
M = not included in the risk analysis for that pathway since the constituent is a non-volatile metal.

g. *What Is The Uncertainty in Human Health Risk Results?* Uncertainty is a description of the imperfection in knowledge of the true value of a particular parameter. This risk assessment has inherent limitations that lead to uncertainty in our risk estimates because of the complexity associated with simulating the behavior of a chemical moving through the environment from disposal in a management unit, to exposure points in various environmental media, and subsequent impacts on receptors. As explained below, limitations also result from the amount, type, and quality of the data used in our assessment, the set of exposure pathways evaluated, and the types of waste management units considered. Because of the number of facilities that manufacture paint and

coatings, it was not feasible for us to directly measure data such as facility/site characteristics (for example, unit area and volume; depth to groundwater; aquifer thickness; hydraulic conductivity; location of wells; type of ecological receptors; behavioral characteristics of receptors) at each representative site to estimate risk.

This section discusses the major areas of uncertainty in risk assessments as classified by the EPA: scenario uncertainty, model uncertainty, and parameter uncertainty.

(a) Scenario uncertainty results from the assumptions we make regarding how receptors become exposed to contaminants. This uncertainty occurs because of the difficulty and general impracticality of making actual studies of all activities involved in the management of a waste and the human activities that occur around the waste management unit.

• This risk assessment does not consider the additive risk from exposure to multiple constituents. Chemical mixtures can display both synergistic and antagonist behavior with regard to risk. In general, however, the overall risks of a mixture are very likely to be greater than that of exposure to a single chemical. Therefore not adding exposures across the chemicals is an area of uncertainty that leads to an underestimate of total risk. We did not calculate the additive effects from multiple-chemical exposure since there was not information on the concentrations or co-management of particular constituents. In addition, for a concentration based listing it is not reasonable to set standards for a constituent that are developed based on the assumed presence of other constituents that have the same health affect. Whether or not a particular chemical mixture poses an additive risk or hazard depends on the targets (tissue, organ, or organ system), the concentrations of all the constituents in the mixture, and the mechanisms of action of the individual chemicals. Without information on the co-management of constituents, it was not feasible to consider additive risks.

• In certain cases, EPA performs a risk assessment on wastes that contain contaminants that also are present in the environment as a result of both natural processes and anthropogenic activities. Under these circumstances, receptors potentially receive a ''background'' exposure that may be greater than the exposure resulting from release of contaminants from the waste. For national analysis like this assessment, the inclusion of background concentrations as part of the analysis is not feasible due to (a) the variability of background concentrations nationwide and (b) the lack of data on national background concentrations for each constituent.

(b) Parameter uncertainty occurs when (1) there is a lack of data about the parameters used in the equations, (2) the data that are available are not representative of the particular instance being modeled, or (3) parameter values cannot be measured precisely and/or accurately because of limitations in measurement technology. Random, or sample errors, are a common source of parameter uncertainty that is especially critical for small sample sizes. More difficult to recognize are nonrandom or systematic errors that result from bias in sampling, experimental design, or choice of assumptions.

• The age of several of the databases used in this analysis to characterize the waste management units or the location of the receptors leads to uncertainty in the analysis. These databases contain information collected by the EPA in several surveys during the mid- to late 1980's. While these databases represent the best available information the Agency had at the time of this analysis, uncertainty exists in the analysis on changes in waste management practices or residential locations that may have occurred during the past decade. The uncertainty associated with these data may lead to an over or under estimate of risk.

• The sorption coefficient, K_d, which is used in the source partition model, the groundwater model, and in modeling constituent concentration in surficial soils, is an important parameter for modeling the fate and transport of metals in the environment. In previous analyses, K_d values were calculated using MINTEQ but, because of comments on the validity of some of the data upon which MINTEQ calculations are based, EPA decided, for this analysis, that K_d values would be derived from literature values. A comprehensive review of the literature was undertaken to compile K_d data for an earlier rulemaking (Inorganic Chemicals Listing Determination, 65 FR 55684, September 14, 2000.) Despite this substantial earlier effort, considerable uncertainty remains in the literature-based values of K_d used in this analysis because data concerning K_d values for particular constituents reported in the literature were limited. In addition, reported values often were not accompanied by qualifying information. Conditions that affect K_d values (e.g., constituent concentration, metal species evaluated, pH, experimental technique) are often not reported in the literature making interpretation of results difficult. For these reasons, substantial uncertainty concerning the values of K_d remain.

• Very little data were available on the physical and chemical characteristics of paint manufacturing waste. To address this, assumptions on the waste characteristics are based on general knowledge of paint and other similar industrial wastes. In this analysis, except for constituent concentration, which was calculated, EPA assumes that the paint manufacturing waste is mixed with other generic industrial wastes. Therefore, general waste characteristics, including default assumptions for the waste parameters (e.g., fraction of organic carbon, pH), were used.

• We used waste volume data in this risk assessment provided by the facilities as part of our RCRA 3007 survey. Since the survey was not a census, there is some uncertainty associated with the waste volume distribution. This uncertainty may lead to an over or under estimate of risk.

• We typically use regional databases to obtain the parameter values necessary to model contaminant fate and transport. Because the data that we used are not specific to the facilities at which the actual wastes are managed, the data represent our estimates of the generic site conditions. For an analysis where waste management locations are so variable, we believe this type of approach is reasonable and is the best method to address the fate and transport of constituents. Nevertheless, the use of these databases in lieu of site-specific data may result in either overestimates or underestimates of risk.

• Sources of uncertainty in toxicological benchmarks include one or more of the following: extrapolation from laboratory animal data to humans, variability of response within the human population, extrapolation of responses at high experimental doses under controlled conditions to low doses under highly variable environmental conditions, and adequacy of the database (number of studies available, toxic endpoints evaluated, exposure routes evaluated, sample sizes, length of study, etc.). Toxicological benchmarks are designed to be conservative (that is potentially overestimate risk) because of the uncertainties and challenges associated with condensing toxicity data into a single quantitative expression. Uncertainty factors are applied to address limitations of the available toxicological data and are necessary to ensure the RfD or RfC is protective of individuals in the general population. The use of uncertainty factors is based on long-standing scientific practice. Uncertainty factors, when combined commonly range from 10 to 1000 depending on the nature and quality of the underlying data. The RfD/RfC methodology is expected to have an uncertainty spanning perhaps an order of magnitude.

• We recognize that significant uncertainties and unknowns exist regarding the estimation of lifetime cancer risks in children. We estimated the risk of developing cancer from the estimated lifetime average daily dose and the slope of the dose-response curve. A cancer slope factor is derived from either human or animal data and is taken as the upper bound on the slope of the dose-response curve in the low-dose region, generally assumed to be linear, expressed as a lifetime excess cancer risk per unit exposure. However, individuals exposed to carcinogens in the first few years of life may be at increased risk of developing cancer.

• The non-cancer toxicological effects in children is also an area of uncertainty. Non-cancer reference doses and reference concentrations for children are based on comparing childhood exposure, for which we have age-specific data, with adult toxicity measures, where adequate age-specific dose-response data is lacking. This mismatch results in a large amount of uncertainty in the estimation of hazard quotients for children. This would sometimes result in an overestimation of children's risk and sometimes in an underestimation. This issue

is still under investigation in the scientific community and no consensus has been reached.

(c) Model uncertainty is associated with all models used in all phases of a risk assessment, because models and their mathematical expressions are simplifications of reality that are used to approximate real-world conditions and processes, and their relationships. Computer models are simplifications of reality, requiring exclusion of some variables that influence predictions but cannot be included in models due either to increased complexity or to a lack of data on a particular parameter. Models do not include all parameters or equations necessary to express reality because of the inherent complexity of the natural environment, and the lack of sufficient data to describe the natural environment. Because this is a probabilistic assessment that predicts what may occur with the management of certain paint manufacturing wastes under assumed scenarios, it is not possible to compare the results of our models to any specific situation that may exist. The risk assessor needs to consider the importance of excluded variables on a case-by-case basis because a given variable may be important in some instances and not in others. A similar problem can occur when a model that is applicable under average conditions is used for conditions that differ from the average. In addition, in some instances choosing the correct model form is often difficult when conflicting theories seem to explain a phenomenon equally well. In other instances, the Agency does not have established model forms from which to choose to address certain phenomena, such as facilitated transport. We selected models used in this risk assessment based on science, policy, and professional judgement. Most of the models selected have been verified and some have been validated. In addition, most of these models have been peer reviewed. These models were selected because they provide the information needed for this analysis and because we generally consider them to be state-of-the-science. Even though the models used in the risk analyses are used widely and have been accepted for numerous applications, they each retain significant sources of uncertainty. Evaluated as a whole, the sources of model uncertainty in our analysis could result in either an overestimation or underestimation of risk. Specific areas of modeling uncertainty in this analysis are:

- There were constituents identified as materials used in paint manufacturing that were not modeled in this risk assessment due to a lack of information on how they behave when introduced to the environment. Our fate and transport modeling is limited to those constituents for which we have (1) the physical/chemical parameters necessary to run our models and (2) adequate information on toxicity to understand potential health impacts from exposure. In selecting constituents of concern, we found multiple constituents that were complex inorganic compounds containing more than one metal of concern and organometallic compounds (compounds containing both a metal and organic constituents) that can be used in manufacturing paint. For example, compounds such as lead chromate molybdate and lead naphthenate may be used as ingredients in paint. An adequate set of both the physical/chemical parameters and toxicity information for modeling fate and transport and predicting risk to human health are lacking for these metal complexes. The technical background document for the risk assessment contains the information we found on a set of organometallics. Due to this absence of data, we simulate the risk presented by these multiple compounds by modeling the ionic form of the metal. For example, the model predictions for lead are used to represent the complex lead inorganic metal compounds and lead organometallic compounds that may be used in paints. Since so little is known about these complex metal compounds and what their fate may be in the environment, our modeling may over or under-estimate the actual risks. In addition, for metals transformations may take place as the pH of the waste or media can change the state of the metal, sometimes to a less toxic form and sometimes to a more toxic form. The risk assessment did not model transformation products or changes in metal species.
- Exposure modeling relies heavily on default assumptions concerning population activity patterns, mobility, dietary habits, body weights, and other factors. There are some uncertainties associated with some of the data used for these parameters. Although it is possible to study various populations to determine various exposure parameters (e.g., age-specific soil ingestion rates or intake rates for food) or to assess past exposures (epidemiological studies) or current exposures, risk assessment is about prediction. Therefore, long-term exposure monitoring in this context is infeasible. The Exposure Factors Handbook provides the current state-of-the-science concerning exposure modeling and assumptions and is used in this risk assessment. To the extent that actual exposure factors vary from the assumptions in this risk assessment, risks could be underestimated or overestimated.
- In modeling the fate and transport of chemicals in groundwater, we did not assess complex hydrogeology such as karst or highly fractured aquifers. Some fraction of the groundwater settings in this analysis have fractured flow. In general, fractured flow in groundwater can channel the contaminant plume, thus allowing it to move faster and more concentrated than in nonfractured flow environment. As a result, our modeling may under or over estimate the concentrations in the groundwater.
- Finally, there is uncertainty in predicting the movement of contaminants over long periods of time. We assess the risk to receptors for the groundwater pathway over a time period of 10,000 years. There are significant uncertainties regarding how exposure, scientific, and environmental assumptions will change over time, and the modeling methodology does not change these assumptions over this 10,000 year period.

We request comments on each of these areas of uncertainty, including their potential impact on our conclusions and whether data are available to improve our analysis.

6. What Was EPA's Approach To Conducting the Ecological Risk Assessment?

Waste management activities cannot only impact the health of individuals living near a WMU, but can also have adverse effects on other organisms and natural systems. For example, wildlife can come into contact with constituents released from WMUs by swimming or living in contaminated waters or by drinking or catching prey such as fish from contaminated waters. For this risk assessment, the EPA conducted an ecological risk screening analysis for all the waste management units evaluated for the human health risk assessment. The purpose of this analysis was to identify whether there is potential for adverse ecological effects from the management of paint production waste in landfills, surface impoundments, and off-site treatment tanks. We performed this ecological risk assessment with a two tiered approach. For the first tier, we assumed that each of the constituents evaluated had a concentration in the waste of 750,000 parts per million. This concentration was a starting number for the analysis and does not have any significance to the way in which paint wastes are currently managed. This waste concentration was selected as a concentration level to perform a screening analysis with since it is greater than what the EPA expects would be managed in paint manufacturing wastes. All constituents except for mercury and lead did not pose an unacceptable risk to ecological receptors at this concentration. For these two constituents, we performed a second level of analysis. For mercury and lead, we predicted what concentrations could be managed in each waste management unit to ensure that all ecological receptors experience a hazard quotient of 1 or less when compared to the 90th percentile environmental media concentrations. These concentrations were 270,000 ppm and 7400 ppm for lead and mercury

respectively. Based on these concentrations we determined that lead and mercury in paint manufacturing wastes do not pose a threat to ecological life. Based on our knowledge of paint formulations and information we received on constituent concentrations from our 3007 survey, we do not expect paint production wastes to contain either lead or mercury at the levels we predicted would pose a hazard to ecological receptors. In addition, since lead and mercury are regulated as hazardous wastes with the toxicity characteristic, we believe that paint manufacturing wastes that have high levels of these constituents will already be regulated as hazardous waste.[23] Although we modeled high concentrations in the waste, we believe that risks were not found to ecological receptors in this screening level risk assessment because of the small waste volumes of non-hazardous waste that are being managed in the waste management units.

The models described in Section III were used to estimate the release of these concentrations from the waste management units, fate and transport of the constituents in the environment, and ultimately, the concentration of each constituent in the different environmental media (i.e., surface waters, soils). The ecological screening analysis compares these modeled media concentrations to ecologically protective media concentrations called chemical stressor concentration limits (CSCL's). The result of this comparison is a ratio called a hazard quotient. When the hazard quotient exceeds 1, there is potential for adverse effects to the ecological receptor. If the hazard quotient is equal to or less than 1, we do not expect adverse effects for a particular ecological receptor. The amount by which the hazard quotient exceeds 1 suggests the potential for adverse ecological effects; however, the screening results do not demonstrate actual ecological effects, nor do they indicate whether those effects will have significant implications for ecosystems and their components.

a. *How Were Ecological Exposures Estimated?* Similar to estimating human receptor exposures, we estimated ecological receptor exposures based on simulated contaminant concentrations in the various environmental media and food items, pathway specific ingestion rates, and receptor type-specific body weights. For this analysis, however, the EPA determined the upper bound constituent concentration that can be present in the emission control dust, combined solids, and aqueous waste and modeled the fate and transport of these constituents into the environment. The resulting media concentrations were then compared to ecological receptor chemical stressor concentration limits. The exposure pathways included in this analysis were (1) root uptake of constituents in soil or sediment by plants, (2) biological uptake of constituents in surface water by aquatic animals (e.g., fish or aquatic invertebrates); (3) biological uptake of constituents in sediment by benthic invertebrates; (4) biological uptake of constituents in soil by soil invertebrates; and (5) ingestion of constituents in surface water, soil, sediment, or food items (plants and animals) by terrestrial vertebrates. This assessment did not take into account the dermal absorption of constituents in surface water or soil by terrestrial vertebrates or the inhalation of volatile constituents in air. There are not enough data available on these types of exposures to wildlife to include them in this risk assessment. The 90th percentile media concentrations were then compared to CSCLs to determine the hazard quotient for each ecological receptor evaluated.

There were several simplifying assumptions made for this analysis that over-estimated the potential hazard to ecological receptors. For example, the exposures are estimated assuming that the receptors derive all their food from the contaminated area and the receptors diets consist predominantly of items with the highest contaminant uptake rates. The methodologies and equations used for the ecological receptor exposure estimates are fully described in the Technical Background Document for the risk assessment.

b. *What Ecological Receptors Did The EPA Evaluate?* Two general types of receptors were evaluated in the ecological assessment. For exposure through direct contact with contaminated media, the receptors were multispecies communities such as the soil invertebrate community or the terrestrial plant community. For indirect exposure through ingestion, the receptors are single species populations, such as white-tailed deer or raccoons and include representative trophic levels and feeding strategies. Evaluating risk to receptor populations and communities included consideration of both aquatic and terrestrial habitats. Within each habitat, risk was evaluated at all trophic levels (*i.e.,* position within the food chain) and for all feeding strategies (*e.g.,* plant feeder, predator). Although actual WMU sites were not defined, it was assumed that WMUs occur in a variety of settings that include terrestrial, wetland, and aquatic systems. Thus, the ecological receptors evaluated in this risk assessment include representative plants and animals from several different terrestrial, wetland, and aquatic habitats. In general, the receptors occur throughout most of the continental United States or throughout broad regions, such as east of the Mississippi River.

Relevant trophic levels and feeding strategies (*i.e.,* herbivorous, omnivorous, and carnivorous diets) were established using simple food webs that describe dietary composition and predator-prey relationships in each of the three habitat types. Receptors representing each feeding strategy at each trophic level were selected. In addition, the receptors represent a cross section of general taxa at each trophic level. For example, invertebrates as well as vertebrates were included, and vertebrate receptors include amphibians, mammals, and birds.

The ecological assessment does not specifically address federally listed threatened or endangered species.

c. *How Did EPA Consider The Toxicity of Constituents in The Ecological Risk Assessment?* The calculation of ecological risk for receptor populations is based on the implicit assumption that each receptor species forages only within the contaminated area, regardless of the size of its home range. For smaller animals, this assumption has little impact on the estimates of exposure. However, for larger animals with more extensive foraging areas, this assumption may overestimate exposure if the animal's foraging patterns tend to be evenly spread over the home range that extends beyond the contaminated area.

For the species specific receptors (both mammals and birds), the overall approach used to establish ecotoxicological benchmarks is similar to the methods used to establish RfDs for humans. Each method uses a hierarchy for the selection of toxicity data and extrapolates from a test species to the species of interest. However, there are fundamental differences in the goals of noncancer risk assessments for humans and ecological receptors. Risk assessments of humans seek to protect the individual while risk assessments of ecological receptors seek to protect

[23] Such high levels of mercury in paint manufacturing are also unlikely due to existing regulations controlling the use of mercury in paint. Prior to the 1990s, paint manufacturing used mercury in paints at low levels (e.g., phenylmercuric acetate was used as a biocide to control mildew in latex paints). EPA restricted this use under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), eliminating mercury in interior latex paints (55 FR 26754, June 29, 1990) and in exterior paints (56 FR 105, May 31, 1991).

populations or communities of important species.

First, because population viability was selected as an assessment endpoint, the benchmarks were developed from measures of reproductive/developmental success or, if unavailable, other effects that could conceivably impair population dynamics. In addition, the population-level benchmark was preferred over population-inference benchmarks. Population-level benchmarks are based on studies of effects on an entire population (*i.e.,* many interacting individuals) while population-inference benchmarks are based on studies of individuals with protection of the population being inferred from protection of the individual (*e.g.,* no observed adverse effect levels for individual organisms on reproductive endpoints). Although relatively few population-level benchmarks have been developed to date, these benchmarks are considered to be more rigorous than the point estimates gleaned from toxicity studies. Once the appropriate ecotoxicological studies were identified for mammals and/or birds, the CSCLs for each receptor were calculated for each medium of interest by scaling the toxicity benchmark from the test species to the receptor species, identifying the uptake/accumulation factors, identifying the exposures from dietary intake, and determining a risk-based concentration in each media. The benchmarks for the community receptors were taken from various sources such as the final chronic values developed for the National Ambient Water Quality Criteria. A detailed description of the benchmarks developed for all of the receptors evaluated is contained in the Technical Background Document for the risk assessment.

7. *Did EPA Conduct a Peer Review of The Risk Assessment?* The Agency has obtained a peer review from independent experts. Their comments have been received and are part of the peer review document that is in the docket for today's proposed rule. The peer review document also describes how the experts were identified and selected, contains information on the experts experience and employment, and provides a copy of the questions the peer reviewers were asked to address. Due to the time constraints for proposal of this rule, the Agency has not yet reviewed and addressed those comments. Both the peer review comments and the public comments will be addressed in the final rulemaking.

IV. Proposed Listing Determinations and Regulations

A. What Are The Proposed Regulations for Paint Production Wastes?

We are proposing that, if you generate any of the paint manufacturing wastes described in these listings, then you must determine whether or not your waste is a listed hazardous waste, or you must assume that it is hazardous. For the wastes identified in the K179 and K180 listings, your waste would become a listed hazardous waste if it contains any of the constituents of concern at a concentration equal to or greater than the hazardous concentration identified for that constituent. You would need to make a determination that all the constituents of concern in your waste are below the hazardous concentrations to have your wastes remain nonhazardous. Waste liquids listed in K180, however, would not be subject to the listing, if the wastes are stored or treated exclusively in tanks or containers prior to discharge to a POTW or under an NPDES permit. We are proposing the following regulatory language in § 261.32 for these wastes:

K179—Paint manufacturing waste solids generated by paint manufacturing facilities that, at the point of generation, contain any of the constituents identified in paragraph (b)(6)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent in paragraph (b)(6)(iii) of this section. Paint manufacturing waste solids are: (1) Waste solids generated from tank and equipment cleaning operations that use solvents, water and/or caustic; (2) emission control dusts or sludges; (3) wastewater treatment sludges; and (4) off-specification product. Waste solids derived from the management of K180 by paint manufacturers would also be subject to this listing. Waste liquids derived from the management of K179 by paint manufacturers are not covered by this listing, but such liquids are subject to the K180 listing. For the purposes of this listing, paint manufacturers are defined as specified in paragraph (b) of this section.

K180—Paint manufacturing waste liquids generated by paint manufacturing facilities that, at the point of generation, contain any of the constituents identified in paragraph (b)(6)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent in paragraph (b)(6)(iii) of this section unless the wastes are stored or treated exclusively in tanks or containers prior to discharge to a POTW or under a NPDES permit. Paint manufacturing liquids are generated from tank and equipment cleaning operations that use solvents, water, and/or caustic. Waste liquids derived from the management of K179 by paint manufacturers would also be subject to this listing. Waste solids derived from the management of K180 by paint manufacturers are not covered by this listing, but such solids are subject to the K179 listing. For the purposes of this listing, paint manufacturers are defined as specified in paragraph (b) of this section.

Due to the uncertainties in our assessment of the management of paint manufacturing waste liquids in surface impoundments, we are seriously considering an alternative proposal not to list paint manufacturing waste liquids. We describe this alternative and our reasoning for this option later in this notice (see Section IV.D).

Under the proposed listings shown above, paint manufacturing wastes with constituents of concern below the concentration limits at the time of generation would not be hazardous waste K179 or K180; such wastes would be nonhazardous from their point of generation, and would not be subject to any RCRA Subtitle C management requirements for generation, storage, transport, treatment, or disposal (including the land disposal restrictions). Similarly, liquid paint manufacturing wastes would also be nonhazardous if the waste is managed or treated exclusively in tanks or containers prior to discharge to a POTW or under an NPDES permit regardless of whether it contained any of the constituents of concern. However, if paint manufacturing wastes are hazardous waste due to another listing code or because they exhibit a hazardous waste characteristic under section 261.24, the wastes remain hazardous under these other regulations.

We are proposing that the constituents and the concentrations in the two above listings (which would be specified in paragraph (b)(6)(iii) of § 261.32) would be those shown in Tables IV.A–1 for waste solids (K179) and in Table IV.A–2 for waste liquids (K180). These are waste concentrations that represent risk-based concentrations for constituents we determined to be of potential concern in paint manufacturing wastes. The concentration-based listing levels for waste solids are based on the risk modeling for landfills, and the levels for waste liquids are based on the risk modeling for surface impoundments. We also evaluated potential air releases from treatment of waste liquids in tanks, but as described in Section IV.C, we did not find significant risks for this management scenario. Therefore, we are proposing not to include wastes managed exclusively in tanks within the scope of the listing for waste liquids. See Section IV.D for further discussion of our reasoning for structuring the listing for waste liquids in this way, and for other options we are considering.

As described in Section III.E, we developed risk-based concentrations for the larger set of constituents shown in Table III.E–4. In general, we relied on the modeling results to guide us in deciding which constituents would be most useful in defining these paint manufacturing wastes as listed hazardous wastes. We chose constituents for listing from the list in Table III.E.4 using a number of criteria.

- We dropped constituents from further concern if the risk-based levels for the waste exceeded or approached 100% (i.e., 1,000,000 mg/kg), because these constituents could not present significant risks in the paint manufacturing wastes we evaluated.
- We did not include constituents that are already regulated by the TC. As discussed in Section IV.G, we found that the regulatory TC levels (see 40 CFR 261.24) would likely be below the protective levels we calculated for these chemicals. Therefore, based on our analysis, the existing TC regulations adequately regulate risks from these constituents in these wastes, because wastes exhibiting the TC would have to be treated prior to disposal.
- We dropped constituents if their levels were so high that we believe it is highly unlikely that these chemicals would ever exist at such levels in waste solids from paint manufacturing.

For paint manufacturing waste solids (K179) we used the risk levels in Table III.E–4 calculated for emission control dust, because these were slightly lower than the levels for the combined solids. Using the above criteria for the 43 constituents listed in Table III.E–4, we dropped 24 constituents that have risk-based levels above 100% and 11 other constituents that are TC chemicals. We dropped three others that are unlikely to exist in paint wastes at the calculated risk-based levels. Two of the three have risk-based levels that are close to 100% and are therefore implausible for waste (n-butyl alcohol—970,000 mg/kg, formaldehyde—930,000 mg/kg). The other constituent, methylene chloride (dichloromethane), has a level of 24% (240,000 mg/kg). This appears unlikely, given that manufacturers have moved away from using chlorinated solvents in paints. This is further supported by the responses to the 3007 survey, which showed that the presence of this chemical was not reported by any facility in nonhazardous waste.

For waste liquids (K180), we used the risk-based levels in Table III.E–2 derived for wastewaters in surface impoundments. We dropped 14 constituents that have risk-based levels above 100% and 13 others that are TC constituents. We also dropped four other constituents that have levels that appear unlikely for waste liquids: ethylene glycol, phenol, methanol, and 2,4-dimethylphenol. The calculated levels for ethylene glycol (790,000 mg/L), phenol (270,000 mg/L) and methanol (200,000 mg/L) were so high that we considered these unlikely to ever occur in liquid paint manufacturing wastes. While all three are potentially used as water-soluble solvent ingredients, phenol and methanol are also used as biocides in water-based paints.[24] While the Survey showed these chemicals were found frequently in paint manufacturing wastes, no generator reported levels in nonhazardous or hazardous wastes that would approach the modeled levels of concern (the only waste with high levels was an off-spec paint containing 20% of ethylene glycol that was sent to fuel blending). For waste streams to approach these concentrations, the constituents would have to start out at even higher concentrations in the product. Such high levels in the products are unrealistic, because products with such high concentration of these constituents would not have the attributes of paint. Therefore, we are not proposing to include these chemicals as constituents in the paint listings.[25]

We dropped 2,4-dimethylphenol as a constituent of concern for waste liquids because the 3007 Survey showed that facilities did not report its presence in nonhazardous waste. Furthermore, the only potential use in paint we found for this chemical was possibly as a biocide. Therefore the low concentrations resulting from such a use would be unlikely to approach the risk-based level (17,000 mg/L). We also note that the TRI data showed only minimal releases (5 lbs.) to off-site wastewater treatment for all facilities in SIC code 2851.

Regulations that limit air releases from off-site wastewater treatment facilities are also likely to keep levels of these organic constituents below such high levels. EPA is planning to propose a MACT standard for paint manufacturers (Miscellaneous Organic Chemical and Coatings Manufacturing) that would regulate HAPs in wastewaters, both when managed on-site and when sent off-site for treatment. Furthermore, subpart DD in 40 CFR part 63 sets National Emission Standards for Hazardous Air Pollutants (NESHAP) from off-site waste and recovery operations, which may include off-site centralized wastewater treatment facilities (July 1, 1996, 61 FR 34140).[26] In addressing potential air releases from such facilities, the CAA regulations are likely to prevent the levels of most chemicals at issue here (e.g., phenol and methanol) from reaching the risk-based levels under consideration in liquid paint manufacturing wastes. This is likely because such MACT standards often provide incentives to reduce HAPs through source reduction or pretreatment to avoid costly engineering controls.

We solicit comment on the proposed list of constituents and their levels. We seek comment and supporting information as to whether any other constituents discussed above should be added to the chemicals for listing paint solids or liquids and the basis for such action. We seek any information that may assist us in deciding whether any of the constituents or levels in Tables IV.A–1 and IV.A–2 are so unlikely to be present at the levels of concern that we should drop them from the listing. For example, the levels for the solids (K179) are high for methyl isobutyl ketone (73,000 mg/kg). The liquid level for formaldehyde (82,000 mg/L) is also unlikely for a chemical that has been used mainly as a biocide or in polymer binders. In addition, we question whether the chemicals methyl methacrylate and styrene, which are used primarily as resins rather than in their monomeric forms, would be present at the high levels shown in Tables IV.A–1 and IV.A–2 for the solid or liquid paint manufacturing wastes. However, we believe levels of the monomeric forms of acrylonitrile and acrylamide that are present in the resins may still present a potential risk at the relatively low levels set for waste solids and waste liquids not managed in tanks. Therefore, we are proposing to include acrylonitrile and acrylamide as listing constituents, because they may be in paint manufacturing wastes at or above these levels (see discussion in Section IV.C on potential risks from tanks). Depending on comments, we may choose to add or remove constituents from the concentration-based listing.

[24] We found solvent uses for phenol were limited in a listing determination for solvent uses of this chemical (see 61 FR 42318, August 14, 1996). Primary uses as a solvent were in the petroleum industry (extraction of lube oil) and in microelectronic and automotive industries (removing coatings). While this previous analysis did not focus on uses as ingredient, which is the potential use in paint formulations, this indicates that the use of phenol for its solvent properties is relatively rare.

[25] The proposed levels are based on the probabilistic risk results for the 90th percentile. If we were to use the results for the 95th percentile, we would consider including methanol, because then the listing level for liquid wastes would drop to 6.2%, which we believe is somewhat more likely.

[26] EPA concluded that this group of wastewater treatment plants would likely include some facilities that would be major sources of HAPs (see 61 FR 34144/2). Thus, these major sources would be subject to the MACT standard.

As required under § 261.30(b), we are proposing to add the constituents that are the basis for the listings to Appendix VII of Part 261. We are proposing to add the constituents in Table IV.A–1 for K179 and the constituents in Table IV.A–2 for K180. In addition, a number of constituents in Tables IV.A–1 and IV.A–2 are not currently listed in Appendix VIII to Part 261 as ''hazardous constituents.'' EPA places constituents on Appendix VIII if scientific studies show the chemicals have toxic, carcinogenic, mutagenic, or teratogenic effects on humans or other life forms (see § 261.11(a)(3)). The Risk Assessment Background Document contains the detailed toxicological data for all constituents we evaluated, including the chemicals we are proposing to add to Appendix VIII: n-butyl alcohol, ethyl benzene, methyl isobutyl ketone, styrene, and xylene. If we choose the alternative of not listing paint manufacturing waste liquids (K180), then we would not need to add the constituents to Appendix VII for K180, and we would need to add only methyl isobutyl ketone to Appendix VIII.

TABLE IV.A–1.—CONCENTRATION LEVELS FOR WASTE SOLIDS (K179)

Constituent	Concentration levels (mg/kg)
Acrylamide	310
Acrylonitrile	43
Antimony	2,300
Methyl Isobutyl Ketone	73,000
Methyl methacrylate	28,000

TABLE IV.A–2.—CONCENTRATION LEVELS FOR WASTE LIQUIDS (K180)

Constituent	Concentration levels (mg/L)
Acrylamide	12
Acrylonitrile	9.3
Antimony	390
Ethylbenzene	11,000
Formaldehyde	82,000
Methyl Isobutyl Ketone	340
Methyl Methacrylate	2,100
Methylene Chloride	4,500
N-Butyl Alcohol	41,000
Styrene	4,600
Toluene	1,200
Xylene (mixed isomers)	3,900

The listing levels we are proposing for K179 and K180 are different for the waste solids and waste liquids. These levels are based on the risk assessment for various scenarios for disposal of solids (landfill) and the liquids (surface impoundment). In general, we believe generators will be able to readily determine which waste category their wastes would be in, based on their responses to the 3007 Survey, and their reported management practices. However, we are considering setting a clear definition to distinguish the waste solids and liquids, such that a generator can readily determine which listing applies. Thus, we request comment on several options in establishing a clear definition that would distinguish solids vs. liquids.

Perhaps the most straightforward approach would be to set a level of percent solids above which the waste would be a solid paint manufacturing waste and below which it would be a liquid paint manufacturing waste. One possible level could be 15%. Thus, this option would define paint manufacturing waste solids as those containing 15% or above solids (by weight). This cutoff reflects the general approach we used in our modeling for solids. In our assessment of releases from landfills we assumed that the waste contained a maximum moisture level of 85% (for sludges; we assumed a maximum moisture level of 15% for dusts). Furthermore, because of the restrictions on free liquids in municipal nonhazardous landfills (e.g., see § 258.28), we do not envision wastes containing less than 15% solids could reasonably be managed in a landfill. Therefore, we believe that wastes containing less than 15% solids will be managed in units associated with wastewater treatment, such as tanks or surface impoundments. In addition, in most cases water will be separated from solids as part of routine wastewater treatment. Thus, generators would be evaluating solid residues, which clearly meet our solid definition, or treated water, which would typically be discharged to a POTW or under an NPDES permit, and would not be covered by the K180 listing in any case.

Percent solids could be measured by an established method, such as the method for total suspended solids (TSS) described in EPA guidelines for test methods used under the CWA (EPA method 160.1 in 40 CFR 136.3, Table 1B).[27] However, generators may have the knowledge necessary to decide whether their paint manufacturing waste was a liquid or a solid, based on past analysis or disposal practices. We believe that in many cases, especially for wastes that are clearly ''wet'' or ''dry,'' the generator can easily tell from a visual inspection that solids content is well above or below 15%. Thus, if we were to set a level to define paint manufacturing waste solids and liquids, we believe we could allow the generator to use his knowledge, rather than necessarily requiring a test.

Instead of setting a specific level of percent solids, another option is to use the Paint Liquids Filter Test (method 9095 in SW–846) to determine if the waste is a liquid or a solid. A paint manufacturing waste found to contain free liquid under this method would be considered a liquid, and would be evaluated under the K180 listing, while a paint manufacturing waste that does not contain free liquids would be subject to the K179 listing. This method appears logical because it is presently used in defining the term ''liquid waste'' in the solid waste disposal criteria for determining compliance with the prohibition on disposing of bulk or containerized liquid in municipal landfills (§ 258.28). Method 9095 is also used in a similar way for hazardous waste landfills (§ 264.313(c)). Thus, using this method to distinguish paint manufacturing waste solids from liquids would be consistent with the definitions used in the operating practices for the management scenario modeled for solids, i.e., landfills.

A third option would be to use a definition of liquids that is analogous to the definition of wastewater used under the land disposal restrictions. Wastewater is defined as waste with less than 1% total suspended solids (TSS) and less than 1% total organic carbon (§ 268.2(f)); nonwastewater is defined as any waste that is not wastewater. While using this approach would allow some consistency in definitions in the listings and the LDR programs, we believe this would not be appropriate. A key disadvantage of this approach is that it defines wastes with greater than 1% TSS as a nonwastewater, i.e., a solid, even though such a waste is highly likely to be managed in wastewater treatment systems using tanks and surface impoundments, and not landfills. Given this problem, we do not think using this definition would be useful to define wastes solids and liquids for purposes of the paint listings.

We seek comment on the need for specific definitions for paint manufacturing waste liquids and solids, and the relative merits of the above options or similar approaches. We also request comment on whether facilities are likely to have information available on the percent solids in their wastes.

[27] Another option would be to use section 7.1 in the TCLP (method 1311) to measure filterable solids.

B. Why Are We Proposing to Use the Level of Constituents in the Waste Solids as Total Waste Concentrations Rather Than Leachate Concentrations?

We are proposing to set the concentration levels for defining hazardous paint solids using the concentrations measured in the waste itself, i.e., the totals concentration.[28] We considered using the landfill leachate levels instead of the waste levels to define the listed waste. Using landfill leachate levels would require generators to evaluate their wastes using a test such as the Toxicity Characteristic Leaching Procedure (TCLP).[29] However, we decided not to use the TCLP approach for a number of reasons. We believe that the partitioning model used to establish the totals concentrations is a more appropriate tool to assess risks posed by the paint manufacturing wastes. This is because the partitioning model factors in periodic placement of the specific waste volumes in cells within the landfill, closure of the landfill after 30 years, volatilization of constituents from the landfill through partitioning to the air, and any degradation of organics while in the unit. The leaching values for the paint manufacturing waste solids result from the partitioning of constituents from the waste to water infiltrating the unit. A test method like the TCLP does not reflect these factors. The TCLP approach is designed only to assess groundwater impacts, and does not account for other releases or processes occurring in landfills. Therefore, the estimated leaching numbers derived from our modeling assessment of paint manufacturing wastes, where partitioning and degradation are occurring before the constituents leave the unit, are not strictly comparable with the simple leaching of constituents from wastes represented by the TCLP.

We recognize that the totals levels appear somewhat high in comparison to the leachable levels we calculated for our assessment of paint manufacturing wastes (Table IV.–3). For example, the leaching level calculated for dichloromethane is 390 mg/L, compared to a total level of 240,000 mg/kg. However, it is not surprising that leachate levels derived from the waste would be lower than the levels in the waste itself. Most of the organic constituents assessed are relatively volatile, and will begin to volatilize as they are placed in the landfill. The entire mass of constituent in the waste is not placed in the landfill at once, but rather is placed in cells over the life of the unit. Therefore, as disposal occurs, the waste constituents are continuing to partition into air, soil, or leachate. Our model also factors in degradation of organics in the landfill. Such biodegradation is relatively slow for most chemicals, however this also assists in attenuating the levels of constituents that are released to the subsurface. We recently published related modeling results as part of the Hazardous Waste Identification Rule (HWIR) using the same modeling approach (64 FR 63382, November 19, 1999, and 65 FR 44491, July 20, 2000), though this effort covered a wider distribution of waste volumes. The use of totals rather than leachate for a concentration-based listing is also consistent with another recent EPA proposal for listing hazardous waste from the Dye and Pigments industry (64 FR 40192, July 23, 1999).

Therefore, we are proposing the concentration levels for the waste itself for the listing for waste solids from paint manufacturing. However, we seek comment on the option of setting the leachate concentrations from our modeling as the listing levels for the paint solids, and on the potential impacts (incremental costs and benefits) of such an approach. We may still consider a final regulation based on the measurement of leachate with the TCLP method, as shown in Table IV.B–3, after further consideration and review of comments.

TABLE IV.B–3.—ALTERNATIVE CONCENTRATION LEACHING LEVELS FOR WASTE SOLIDS (K179)

Constituent	Concentration levels (mg/L)
Acrylamide	0.70
Acrylonitrile	0.91
Antimony	58
Methyl Isobutyl Ketone	42
Methyl methacrylate	160

C. Why Are We Proposing to Exclude Waste Liquids Managed in Tanks?

We are proposing that liquid paint manufacturing wastes stored or treated exclusively in tanks or containers prior to discharge to a POTW or under an NPDES permit not be subject to today's proposed listing because these wastes managed in tanks do not pose sufficient risk to warrant hazardous waste regulation.

As shown in Table III.D–4, nearly all of the liquid paint manufacturing wastes are managed in some type of wastewater treatment system (small volumes are sent to fuel blending or other treatment). Furthermore, as indicated in Table III.D–4, liquid wastes are primarily classified as water or caustic cleaning liquids, except for one small volume of solvent cleaning liquid that went to a fuel blender.

For on-site tanks, as described in Section III.E, we conducted a bounding risk analysis for on-site treatment tanks that evaluated the worst case scenario for on-site management in tanks, including storage as well as treatment tanks. Our analysis identified some potential constituents of concern: Benzene, chloroform, mercury, methylene chloride, tetrachloroethylene, and acrylonitrile. However, when the survey responses provided data on constituent levels, these data indicated that these constituents are unlikely to be present in these wastes at levels of concern. In addition, for benzene, chloroform, mercury, and tetrachloroethylene, the risk-based concentrations derived from the bounding risk analysis are significantly higher than the respective TC levels; therefore, the TC regulations provide some control for most of these constituents. For acrylonitrile, the calculated risk-based concentration of 1,500 ppm is significantly higher than the projected range of concentration of 1–40 ppm for acrylonitrile in liquid waste streams; as such, it is not of concern. Most other constituents of concern either bounded out (*i.e.,* modeled levels were higher than 1,000,000 ppm), or were unrealistically high for paint manufacturing wastes. The risk-based levels derived from the risk assessment for methylene chloride, methyl isobutyl ketone, toluene, vinyl acetate, and xylene are so high that we believe they are highly unlikely to exist at such levels in nonhazardous liquid paint manufacturing wastes. This evaluation for on-site tanks is discussed in more detail in the following section (IV.C.1).

For off-site treatment tanks, we conducted a probabilistic risk assessment as described in Section III.E. This risk assessment identified three potential constituents of concern: Mercury, benzene and acrylonitrile. The survey responses showed that these constituents are not likely to be present in the wastes at concentrations of concern. In addition, the levels of mercury and benzene in the waste are also limited by the existing TC regulations, *i.e.,* the risk-based levels derived from the risk assessment are

[28] This is not an issue for the listing for paint liquid wastes, because any analysis of the liquids would include an analysis of the total liquid mixture.

[29] See method 1311 in OSW's methods manual, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW–846.

well above the TC levels. As described below, we determined that acrylonitrile is unlikely to exist in paint manufacturing waste liquids at the risk-based levels of 69,000 ppm. Therefore, there is no need to regulate paint manufacturing waste streams managed in off-site treatment tanks. See section IV.C.2 for a full discussion.

1. On-Site Storage and Treatment Tanks

Based on our extrapolated survey results, we estimate that 14,564 metric tons (approximately 47%) of nonhazardous liquid paint manufacturing wastes generated are managed in on-site storage tanks and 7,514 metric tons, or approximately 24%, of nonhazardous paint manufacturing waste liquids are managed in on-site treatment tanks. After these wastes are managed on-site in storage and treatment tanks, the wastes are then either directly discharged into a waterway under a NPDES permit, discharged into a POTW, or sent to centralized wastewater treatment facilities.

For tanks, we normally model air emissions. We assume that significant groundwater risks are unlikely because tanks do not leak liquids into the soil if properly maintained. Treatment tanks represent a more conservative scenario for modeling purposes because they are typically used for the aeration and flocculation of liquid wastes to settle out solids, causing more constituents to escape into the air than the relatively quiescent accumulation of liquids in storage tanks. Accordingly, we evaluated the potential risks from the management of liquids in treatment tanks to cover both scenarios.

As described earlier in Section III.E, we conducted a bounding analysis of the potential air releases from the nonhazardous liquid wastes treated in on-site treatment tanks. This conservative analysis assumed tanks are uncovered, and modeled the largest liquid residual volume and tank size reported by the surveyed facilities. The risk-based levels for most constituents exceeded 100%, and would not present significant risks in the paint manufacturing wastes for this scenario. The risk assessment results showed somewhat lower risk-based concentrations for paint manufacturing wastes in tanks for some constituents, *i.e.,* benzene (1,100 ppm), chloroform (15,000 ppm), mercury (41 ppm), tetrachloroethylene (22,000 ppm), acrylonitrile (1,500 ppm), methylene chloride (17,000 ppm), methyl isobutyl ketone (780,000 ppm), toluene (120,000 ppm), vinyl acetate (100,000 ppm), and xylene (830,000 ppm); we discuss these chemicals in detail below.

In general we do not expect significant levels of organic chemicals in on-site wastewater treatment systems for several reasons. First, the liquid wastes most likely to have high organic content, solvent cleaning wastes, are managed as hazardous. Except for one facility, these wastes were coded as hazardous waste, either due to a F-listing or because of a characteristic. The 3007 survey showed that all the generators of hazardous waste liquids reported the wastes were treated by incineration, fuel blending, or they were reused. Therefore, we have no data suggesting facilities are treating such high organic liquids in on-site wastewater treatment systems.

Second, the 3007 survey shows that none of the small number of facilities that treated wastes in on-site wastewater treatment (WWT) tanks (8 facilities, representing about 18 facilities in our weighted sample) reported significant organic content in their wastes. Of the 8 facilities, only one reported the presence of any organic constituents of potential concern, but listed them only because they may occasionally be present in the waste. Of the other 7 facilities, most reported the presence of metals, a few reported vinyl acetate polymers, and one reported the water-soluble ethylene glycol.

Finally, as noted in Section IV.A above, a MACT standard covering paint manufacturers will soon be proposed that will address potential air releases from these facilities. The MACT would place limits on HAPs in wastewater treatment systems, and would likely keep organic levels in paint manufacturing wastewaters relatively low.

Turning to the constituents of possible concern (benzene, chloroform, mercury, methylene chloride, tetrachloroethylene, and acrylonitrile), the facilities reported in their survey responses that these chemicals were either not present at all, or were present at only trace concentrations. Out of the 187 paint manufacturers surveyed, the responses showed benzene was present in trace amounts in only one facility's nonhazardous water cleaning liquid; mercury was present in only two facilities' nonhazardous water cleaning liquid at trace levels (up to 0.06 ppm). No facility reported the presence of any chloroform, methylene chloride, or tetrachloroethylene in any liquid residual. We discuss the possible presence of acrylonitrile in detail below. Furthermore, the risk-based levels for most of these constituents are well above their TC levels (benzene-0.50 ppm, chloroform-5.0 ppm, mercury-0.2 ppm, and tetrachloroethylene-0.7 ppm). Consequently, we are not proposing regulating these constituents under today's proposed listing.

Acrylonitrile is a monomer, *i.e.,* a relatively small compound with low molecular weight. It reacts with other monomers to form polymers (*i.e.,* cross-link into large, high molecular weight compounds) that are used as paint binders. However, the reaction is rarely 100% complete, and small amounts of the individual monomers remain unreacted as impurities in the polymer. Unreacted acrylonitrile monomers, not their polymers, are the targeted constituents of concern in our risk assessment.

With respect to acrylonitrile monomers, we do not expect this constituent to be present in paint manufacturing wastewaters above the risk-based concentrations derived from the bounding analysis for tanks. To analyze whether concentration levels of acrylonitrile at 1,500 ppm are reasonable as a basis for listing liquids in on-site tanks, we developed a methodology to determine whether these constituents are likely to occur in paint manufacturing waste liquids at concentrations within the range of the risk-based levels. We assessed potential concentrations of acrylonitrile in paint manufacturing liquid waste streams in a three-step process that involved tracking the monomers from point of origin (binder) to the final destination (liquid waste streams): (1) We estimated the concentration range of acrylonitrile monomers in the binder systems used to make paint; (2) we estimated the volume percentage of the binder systems added into paints themselves; and, (3) we estimated the monomer concentration range in paints in tank cleaning wastes. Based on these calculations (which are discussed in more detail below), we estimated that the ranges of acrylonitrile monomer concentrations in the liquid waste streams should be one to 40 ppm. We then compared these projected concentration ranges of acrylonitrile in the liquid waste streams to the risk-based levels calculated in the risk assessment.

As specified above, we estimated the likely range of unreacted monomer of acrylonitrile in the binders (*i.e.,* polymers) to be between 20 ppm and 1,000 ppm. This is reflected in our analysis of the use of acrylamide and acrylonitrile polymers in paint formulations [30] and the Material Safety

[30] See the memo from Paul Danault, Dynamac Corporation, to David Carver and Cate Jenkins, EPA,

Data Sheet (MSDS) data we obtained from some paint manufacturers (copies available in the public docket for today's proposed rule), which show the monomer mixture in binders in the 500 to 1,000 ppm range. Second, we projected that the likely concentration ranges of monomers in a paint or coating are approximately 10 ppm to 500 ppm for acrylonitrile. This estimate was based on our examination of paint formulations, which indicates that these paint formulations contain up to 50% by weight of acrylonitrile-acrylic polymer.[31] Finally, we estimated the projected monomer concentration in the resulting water cleaning liquids is approximately one ppm to 40 ppm for acrylonitrile given that approximately 50 gallons of water are needed to wash a typical paint mixing tank of approximately 5 feet in diameter and 8 feet in height with a paint depth of 6 feet,[32] and that a 0.0625-inch film of paint is attached to the inside surface of the tank up to 6 feet (amounting to a total of 4 gallons of paint to be rinsed). These projected acrylonitrile concentrations in paint manufacturing wastewaters are significantly lower than the calculated risk-based concentration of 1,500 ppm. For more details, see ''Potential Acrylonitrile Concentrations in Paint Manufacturing Liquid Waste Streams' in the public docket for today's proposed rule. Therefore, we believe it is highly unlikely for this constituent to be present in paint manufacturing liquid waste streams at such levels.

In addition, according to the information available to us, acrylonitrile is not widely used in the U.S. paint manufacturing industry, and its use is diminishing. For example, resin manufacturers are marketing ''acrylonitrile free'' resins. It is also a practice within the resin manufacturing industry to remove residual monomer before selling the polymer for paint production.

The low use of this binder in paints is supported by our survey data. Six of 187 surveyed paint manufacturing facilities reported acrylonitrile-derived polymers in their nonhazardous liquid residuals (in particular nonhazardous water cleaning liquids). In addition, one survey response indicated the presence of acrylonitrile and acrylonitrile-derived polymers in the nonhazardous water cleaning liquids at 2.8%. Assuming the polymers used by this facility include the monomers in concentrations ranging from 20 ppm to ×1,000 ppm for acrylonitrile as estimated above, the maximum monomer concentration in this facility's nonhazardous wash water would be less than 28 ppm (i.e., 2.83% x 1,000 ppm/acrylonitrile monomer in polymer), which is consistent with our assessment (i.e., between <1 ppm to 40 ppm).

The risk-based levels derived from the risk assessment for methyl isobutyl ketone (780,000 ppm, or 78%), toluene (120,000 ppm, or 12%), vinyl acetate (100,000 ppm, or 10%), and xylene (830,000 ppm, or 83%) are so high that we believe they are highly unlikely to exist at such levels in nonhazardous liquid paint manufacturing wastes. This is reflected in the responses to our Section 3007 survey, which indicated that the highest levels of toluene, vinyl acetate and vinyl acetate-derived polymers, and xylene in nonhazardous liquid residuals were 0.025 ppm, 16,000 ppm, and 118 ppm, respectively.

In conclusion, our analysis indicates there are no significant risks posed by the modeled constituents in nonhazardous paint manufacturing wastes that are managed in on-site storage and treatment tanks. We believe the likely levels of the potential constituents of concern in paint manufacturing wastewaters are substantially lower than the risk-based concentrations derived from the bounding risk analysis. Therefore, requiring the facilities to analyze or otherwise evaluate these constituents would impose an unnecessary burden on paint manufacturers. Thus, we are proposing that paint manufacturing waste liquids stored and/or treated in on-site tanks at paint manufacturing facilities are not subject to today's proposed listing.

2. Management of Liquid Paint Manufacturing Wastes in Off-Site Treatment Tanks

Based on our extrapolated survey results, we estimate that 6,407 metric tons (approximately 21%) of liquid nonhazardous paint manufacturing wastes generated are disposed off-site in privately owned wastewater treatment facilities where tanks and surface impoundments may be used as part of the treatment process. Following treatment, the wastes are typically discharged into surface waters under an NPDES permit, or discharged to the POTW system.

As described earlier in Section III.E, the risk assessment conducted for liquid paint manufacturing wastes managed in off-site treatment tanks identified potential inhalation risks associated with only a few constituents. The risk assessment estimated risk-based concentrations for mercury (10,000 ppm), benzene (190,000 ppm) and acrylonitrile (69,000 ppm).

As discussed above, the survey showed that facilities reported only traces of benzene or mercury in a few nonhazardous liquid residuals. Furthermore, levels of both constituents are controlled by the existing TC regulations. Therefore, there is no need to regulate these TC constituents further under today's proposed listing.

For acrylonitrile, the risk-based concentration of 69,000 ppm is significantly higher than the estimated range of acrylonitrile monomer in paint manufacturing wastewaters (see previous discussions on liquid wastes managed in on-site storage and treatment tanks). Therefore, it is highly unlikely for this constituent to be present in paint manufacturing liquid waste streams at such a high level.

We note that 21 of the 187 surveyed paint manufacturing facilities reported that they sent nonhazardous liquid wastes to off-site wastewater treatment facilities, of which only one reported having any of the three constituents of concern in the wastewater. Specifically, this facility sent a very small quantity of nonhazardous wash water (151 gallons/year) containing an unknown amount of acrylonitrile to a centralized wastewater treatment facility.

In conclusion, we believe there are no significant risks posed by the modeled constituents in nonhazardous paint manufacturing wastes that are managed in off-site treatment tanks. We believe the levels of the potential constituents of concern in paint manufacturing wastewaters are substantially lower than the risk-based concentrations derived from the risk assessment. Therefore, requiring the facilities to analyze or otherwise report these constituents would impose an unnecessary burden on paint manufacturers. In addition, the levels of some constituents are controlled by the existing TC regulations. Furthermore, as noted previously, EPA has recently proposed a NESHAP for miscellaneous paints and coating manufacturing operations that would regulate wastewaters, both on-site and if sent off-site for treatment.[33]

dated September 6, 2000, which is in the docket for today's proposed rule.

[31] *Ibid.*

[32] That is, 50 gallons of water used for washing per about 800 gallons of paint produced in the tank. This is a conservative assumption compared to the information in Reference 7 of the Bibliography, Development Document for Effluent Limitations Guidelines and Standards for the Paint Formulating Point Source Category, EPA 440/1–79/049B, which states that the median wastewater generation at waterbone paint facilities is 0.2 gallons per gallon of paint produced.

[33] As discussed previously, some off-site nonhazardous wastewater treatment facilities may also be covered by the NESHAP/MACT standards

Continued

Thus, we are proposing paint manufacturing waste liquids treated in off-site treatment tanks are not subject to today's proposed listing.

D. Why Are We Proposing a Contingent Management Listing for Liquid Paint Manufacturing Wastes, and What Other Options Are We Considering?

We are considering various options for the listing for paint manufacturing waste liquid (K180). Under the listing proposed for K180, the wastes would not be listed if they are managed in on-site storage and treatment tanks or containers prior to discharge to a POTW or under a NPDES permit. (Of course, if the concentrations of the listing constituents are below the regulatory levels, the waste would not be hazardous in any case.) We are proposing this type of ''contingent management'' listing because we did not find significant risk from treatment or storage in tanks, as noted above. However, if a paint manufacturing waste generator intends to send the waste off-site for treatment outside of tanks (and waste constituents are not below the listing levels), the waste would be K180 and would be subject to storage requirements under Subtitle C. We recognize that the regulation of the onsite storage and treatment of the waste in tanks prior to the waste being shipped offsite may be unwarranted because our risk analysis for tanks shows no significant risk for liquid paint manufacturing waste. Therefore, we are soliciting comment on the option of exempting wastes stored or treated on-site in tanks or containers from being a hazardous waste while it is stored on-site, regardless of what the ultimate treatment or disposal practice might be. This would mean that the point of generation for K180 would be when the waste is sent off-site, and that it would not be classified as K180 hazardous waste while it is stored or treated in tanks or containers on-site prior to shipment off-site for disposal.

The constituent levels we are proposing are based on the possible risks from management of the liquid wastes in an off-site centralized wastewater treatment system with an unlined surface impoundment. We did not complete a risk assessment for possible risks for various other known or potential management practices. Given that we found risk in one management scenario, but did not assess risks from other major practices, we are limiting the exemption from the listing to the management practice that we determined posed no significant risk, i.e., management in tanks. Therefore, we are proposing to list the paint manufacturing waste liquids, unless they are managed in tanks prior to discharge under an NPDES permit or to a POTW.

As discussed in Section II.G, the 3007 Survey showed that 21 paint manufacturers reported sending their liquid wastes to 24 off-site wastewater treatment facilities. We contacted 9 of these 24 and found one treatment facility that reported using a lined surface impoundment to treat two different paint manufacturers' liquid wastes. Based on the weighting factors used for our survey sample, we estimate these 24 off-site wastewater treatment facilities represent about 40 facilities in the U.S. that may accept paint liquids. While we cannot extrapolate the information from nine wastewater treatment facilities to the overall population, we estimate that there could be 4 to 5 treatment facilities that use impoundments of some kind. The one facility with an impoundment indicated the unit was lined, however there are no Federal regulatory requirements that ensure this would be the case for other impoundments throughout the country. Hence, it may be reasonable to assume that some of these impoundments may be unlined for modeling purposes. We note that surface impoundments are used to treat wastewaters in general, and that a recent study confirmed that a significant portion of impoundments in some industries are unlined.[34] (However, this study focused primarily on on-site impoundments used in specific industries, and not commercial off-site treatment facilities). Therefore, if we assume management of liquid wastes in an unlined impoundment is a plausible management scenario, our assessment suggests that the risks from such management may present a significant potential hazard to human health and the environment for some constituents of concern.

However, we are also seriously considering not listing paint manufacturing waste liquids, or using a different approach for a listing, due to the uncertainty in management practices we assumed in our risk assessment. While we are proposing to list because of potential risks arising from unlined surface impoundments, we are considering the alternative of not listing this waste because this may not be a ''plausible'' management scenario. As noted above, while the survey data shows that management in an off-site treatment facility is relatively common, we found only one case where a surface impoundment was in use. We estimate that only 4 to 5 such impoundments may be receiving any of the paint manufacturing waste liquids from the estimated 972 paint manufacturers. Thus, management of these wastes in surface impoundments appears to be an infrequent occurrence. The number of unlined impoundments receiving this waste is more uncertain due to our limited data on surface impoundments, but the probability of off-site commercial treatment facilities treating paint manufacturing wastes in such unlined units is likely to be even lower than the number of facilities using impoundments.

The effectiveness of liner systems depends, in part, on how they are designed. Composite and double liners that combine two or more layers of liner material with leachate collection and leak detection should minimize leakage to the subsurface during the period when the leachate collection system is actively managed. While it is difficult to predict the level of protection afforded by a liner system due to the uncertainty concerning long-term performance, we believe the level of protection could be significant for a surface impoundment, which will contain liquid wastes only during its operating life.[35] Therefore, our assessment of an unlined surface impoundment may overestimate potential risks from this disposal scenario.

The risk results from modeling surface impoundments may also overestimate risks for other reasons. As noted in Section III.E, we used impoundment data gathered in a 1985 Industrial D Screening Survey. We were not able to distinguish off-site vs. on-site impoundments from these data, so we used a sample from all units in the database. Because most impoundments

in 40 CFR part 63 (61 FR 34140, July 1, 1996), if they are a major source of hazardous air pollutant (HAPs) emissions defined in section 112 of the CAA amendments of 1990, and if the wastes they receive from off-site contain one or more HAPs.

[34] Based on an initial review of data from the Study of Industrial Non-hazardous Waste Surface Impoundments required under the Land Disposal Program Flexibility Act. Also, in a 1995 EPA found only 26 States had requirements for liners under State regulations: see State Requirement for Industrial Non-Hazardous Waste Management Facilities, U.S. Environmental Protection Agency, October 1995.

[35] We believe there is greater uncertainty about the efficacy of liners in providing long-term protection from releases from landfills, because the wastes remain indefinitely. A synthetically lined impoundment with a finite operational life of perhaps 30 to 50 years is less likely to release wastewater during the life of the unit. During operation, leaks in the liner system would be detected and presumably fixed; active use of an impoundment can be stopped, drained, and liners repaired. Also, the leachate collection system is likely to prevent a significant release during operation.

are part of on-site treatment processes for industrial process wastewater, the data include a variety of types of units that may not be realistic for the off-site commercial wastewater treatment facilities we are attempting to model. Our database contains units with characteristics that are unlikely for large off-site treatment facilities, i.e., many units are relatively small (median area about 3,200 m^2) and have low flow rates with long retention times (median retention time about 0.5 years, 90th percentile retention of 50 years). These characteristics mean that many of the impoundments used in the modeling would have a fairly high fraction of paint manufacturing waste, e.g., the 90th percentile value for fraction of paint manufacturing waste in the unit was one. We believe that off-site commercial treatment units are more likely to be larger and have much shorter retention time, thereby reducing the average fraction of paint manufacturing waste in the treatment units. While it is difficult to gauge the importance of these characteristics in our risk assessment results, these may lead to an overestimate of impoundment risks. We may use this factor, in conjunction with a full review of all comments, as an additional reason not to list paint manufacturing waste liquids.

We solicit any information on the prevalence of surface impoundment management of paint manufacturing waste liquids, and any data related to the use of surface impoundments, either lined or unlined. After reviewing all comments and reconsidering all available information on the possible risks from management of paint manufacturing waste liquids, we may decide not to list this waste.

Assuming we decide to finalize a listing for paint manufacturing waste liquids due to the potential for risks from surface impoundments, we are also soliciting comments and supporting data on an alternative listing that would exclude other practices, such as incineration and fuel blending. We could limit the scope of the listing so that it would clearly apply only to wastes managed in surface impoundments. Thus, the listing could specify that it would apply only if the waste exceeded the regulatory concentration levels, and if the waste was managed in a surface impoundment. We may decide that such an approach is appropriate in this case given that this was the only practice modeled that presented unacceptable risk, and because the practice may be very infrequent. For the paint manufacturing wastes at issue in today's proposal, we did not find significant risks from management in tanks.[36]

The other reported management practices of potential concern were thermal treatment in incinerators, cement kilns, and fuel blending. As noted previously, in past listing determinations where we have attempted to assess risks from incineration, we found that the potential risks from the release of constituents through incineration would be at least several orders of magnitude below potential air risks from releases from tanks or impoundments (see listing determination for solvent wastes at 63 FR 64371, November 19, 1998). Although metal constituents would not be destroyed in thermal treatment, we expect the metal content of nonhazardous paint manufacturing waste liquids sent to incineration to be low; this is consistent with the 3007 Survey data, which show no nonhazardous paint manufacturing waste liquids with significant metal content. Limiting the listing to wastes only managed in impoundments would reduce the overall burden of the listing, so that it would apply only to the practice of most potential concern, i.e., surface impoundments.

E. Potential for Formation of Non-Aqueous Phase Liquids in Paint Manufacturing Wastes

We considered the possibility that some constituents in paint manufacturing wastes might form distinct nonaqueous phase liquids (NAPLs). NAPLs can be an issue, because once released to the subsurface a number of difficult problems may occur. Such problems include the creation of a long-term NAPL source in the subsurface and facilitated transport of contaminants that have an affinity for the NAPL fraction. The formation of NAPLs is strongly dependent on the specific wastes in question and the management practice, and it is difficult to predict when NAPLs might be important. However, many of the organic chemicals we evaluated for this listing are highly water soluble and in many cases volatile, thus most have little potential for NAPL formation. EPA has used a general approach in the Hazardous Waste Characteristics Scoping Study to identify which chemicals have some potential to form NAPLs based on water solubility and other parameters.[37] NAPL-forming chemicals generally have relatively low water solubilities (less than 5,000 mg/L) and are liquids at ambient temperature. Applying these criteria, the only non-TC constituents of concern that may potentially form NAPLs would be the phthalates and the aromatic hydrocarbons (ethylbenzene, styrene, toluene, and xylenes). Any NAPL-forming chemicals that are regulated under the TC (i.e., the slightly soluble chemicals benzene and tetrachloroethylene) are unlikely to form NAPLs in wastes, because the TC levels are well below their water solubility. Thus, wastes with TC constituents high enough to form NAPLs would be regulated as hazardous, and would not be land disposed until treated.

We believe that paint manufacturing wastes with the high organic content needed to form NAPLs are unlikely to be land disposed for several reasons. First, high organic wastes are typically sent for thermal treatment or recycling. For example, see the final listing determination for solvents (63 FR 64372, November 19, 1998); we found that solvent wastes with high organic content are usually thermally treated, and that wastes sent to landfills contained negligible amounts of solvent (63 FR 64384). Also, many landfills are unlikely to accept wastes with free liquids, and in fact such a practice is restricted under Federal regulations for municipal solid waste landfills (§ 258.28) and Subtitle C landfills (§ 264.314). Similar restrictions, while not federally mandated, are in place in most States for off-site nonmunicipal solid waste landfills.[38]

We believe that any paint manufacturing waste liquids that may be placed in impoundments or tanks at offsite wastewater treatment facilities are unlikely to contain significant NAPLs. The nonhazardous paint manufacturing waste liquids are nearly all reported to be from aqueous washing of equipment, with only one facility reporting generating a nonhazardous liquid from solvent cleaning; this facility sent this waste to a fuel blender.

[36] Discharges to surface waters are controlled under the CWA and require an NPDES permit, while discharges to a POTW are subject to State and national pretreatment standards. Note that 40 CFR 261.4 reflects the RCRA statute and excludes ''any mixture of domestic sewage and other wastes that passes through a sewer system to a POTW for treatment'' (40 CFR 261.4(a)(1)(ii)), and industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the CWA (40 CFR 261.4(a)(2)).

[37] U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Hazardous Waste Characteristic Scoping Study, November 1996, and U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response, Evaluation of the Likelihood of DNAPL Presence at NPL Sites, EPA 540–R–93–073, September 1993.

[38] U.S. Environmental Protection Agency, Office of Solid Waste, State Requirements for Industrial Non-Hazardous Waste Management Facilities, October 1995.

All other waste solvents were coded and managed as hazardous waste. This is not surprising, given that many solvents used for cleaning equipment would yield wastes that are listed as hazardous (F001 through F005), or exhibit a characteristic, such as ignitability.

The nonhazardous water cleaning liquids are mixed with other wastewaters when treated in offsite centralized wastewater treatment systems, making significant NAPLs less likely. As noted above in Section IV.A, existing and proposed regulations under the CAA would also tend to keep the organic content of wastewaters low for any chemical designated a hazardous air pollutant, or HAP. Nearly all constituents of potential concern we identified for paint manufacturing wastes are HAPs under the CAA. We believe that these rules make it unlikely that NAPLs would form in offsite wastewater surface impoundments.

The information in the 3007 Survey suggests that wastes with liquid or free solvents are not disposed in landfills. The waste data we collected from the 3007 Survey indicates that few of the nonhazardous paint manufacturing wastes of concern have the high organic content necessary to form a separate NAPL phase. Of the nearly 200 nonhazardous wastes reported (125 solids, 74 liquids), only 15 were reported to have levels of any organic constituent above relatively low levels (1%). In most of these 15 cases, the organic constituents included levels of associated polymers (polymers of acrylonitrile, styrene, and vinyl acetate). The few nonhazardous wastes with significant concentrations of a constituent that might form a NAPL (3 wastes reported to contain 2% or 6% butyl benzyl phthalate) went to incineration (one waste with 10% xylene went to unspecified offsite treatment). The remaining wastes with significant organic content contained ethylene glycol, which is highly unlikely to form NAPLs given its extreme solubility in water. In any case, only one waste with organic content above 1% was reported to go to a landfill (an off-specification paint manufacturing waste with 2.5% ethylene glycol). We recognize that the information for constituents in the 3007 Survey is limited, however, the data in hand show that generators do not appear to be sending paint manufacturing waste with high organic content to land disposal. Even in the event some generators were sending some wastes with higher potential NAPL-forming chemicals to land-based units, the volumes would be relatively small. This makes it unlikely that organic levels in these units would be sufficient to generate a NAPL phase that would impact releases to groundwater.

As noted previously in Section IV.A, EPA is planning to propose a MACT standard to address potential releases of volatile HAPs from paint manufacturing facilities. The proposed MACT would place limits on HAPs in wastewaters and keep organic levels in paint manufacturing waste relatively low.

As another check on the potential for NAPL formation in paint manufacturing wastes, we examined the Survey data for discarded off-specification paint. Our survey data indicated that disposal of off-spec products in landfills was fairly infrequent (13 facilities reported a total of 941 metric tons in 1998). From follow-up telephone calls to these generators, the facilities almost uniformly indicated that the off-specification material was not in liquid form; the wastes were in solid resins, hard cured by drying, or otherwise solidified prior to disposal.

F. Scope of the Listings and the Effect on Treatment Residuals

Today's proposal would result in two new hazardous waste listings that differ from previously promulgated listed hazardous wastes in that they include constituent-specific concentrations to define the scope of the listings. The primary purpose of these ''concentration-based listings'' is to establish levels at the point of generation of a waste, above which that waste is considered to be a listed hazardous waste (i.e., ''entrance'' levels). Wastes that are generated below these levels would not be subject to these listings.

We are also proposing to use the listing concentrations as ''exit'' levels for residues from paint manufacturing waste solids (K179). Residuals from the treatment, storage, or disposal of listed hazardous wastes are usually classified as hazardous wastes based on the ''derived-from'' rule (see 40 CFR 261.3(c)(2)(i)).[39] The use of the listing concentrations as exit levels for treatment residues would terminate the applicability of the derived-from rule and, therefore, the treatment residues would no longer be considered a listed hazardous waste. We are specifically proposing to add language to the standards in 40 CFR 261.3 to describe this self-implementing process for paint manufacturing waste solids (K179). For reasons discussed below, we are proposing that generators cannot use the listing levels for paint manufacturing waste liquids (K180) as exit levels, even if the waste falls below those levels through treatment. In the following discussion we also clarify further the status of liquids derived from paint manufacturing waste solids and vice-versa, and address mixtures or treatment residues that occur away from the paint manufacturing facility, such as at an off-site treatment facility.

We envision that the proposed listing of the paint manufacturing waste solids (K179) would function similarly to a hazardous waste characteristic such as toxicity, except that the concentration levels would be the basis for deciding a waste is hazardous only when applied to the solids as generated or managed at a paint manufacturing facility. Thus, a waste would become hazardous K179 only if it meets or exceeds the listing levels at the paint manufacturing facility. Structuring the listing for paint manufacturing waste solids in this way avoids implications for solids generated off-site from a *nonhazardous* waste that in part, or in whole, originated from a paint manufacturing facility. For example, we avoid small quantities of nonhazardous paint manufacturing waste liquids treated at an off-site commercial wastewater treatment facility subjecting any liquid or solid derived from them at an offsite treatment facility to evaluation against the levels proposed today for paint manufacturing wastes.[40]

We are proposing, however, that the paint manufacturing waste solids that are hazardous K179 may be treated to generate nonhazardous waste, if the treatment results in constituent concentrations that are below the listing levels in K179. Note that land disposal restrictions would still apply, as they do to ''decharacterized'' waste that was hazardous only due to a hazardous waste characteristic, until the waste meets the LDR treatment requirements (see Section VI of today's notice for the proposed standards). Thus, if treatment of K179 yields constituent levels that are below the listing levels and meet the appropriate LDR standards, the waste may be disposed as a nonhazardous waste (e.g., in a Subtitle D landfill). We are specifically proposing to add language to the standards in 40 CFR 261.3 to exempt solids that previously

[39] Also, the ''mixture'' rule (see 40 CFR 261.3(a)(2)(iii) and (iv)) provides that, with certain limited exceptions, any mixture of a listed hazardous waste and a solid waste is itself a RCRA hazardous waste. We are not proposing any changes to the mixture rule in today's action.

[40] Note that a paint manufacturing waste solid could be nonhazardous when generated, but become hazardous later if management on-site led to the waste becoming more concentrated and exceeding the listing levels. If this occurs at the paint manufacturing facility, it would become a listed K179 waste.

met the K179 listing, if the constituent levels are below the listing levels. We request comment as to whether the derived-from rule should apply to the K179 paint manufacturing wastes solids beyond the paint manufacturing site as they would in a traditional listing. However, we believe that our evaluation of the risks of disposal of solid K179 would apply equally well to solids that have been treated.

The proposed listing of paint manufacturing waste liquids (K180) operates like a characteristic only in the sense that if a paint manufacturing waste is below the listing level at the point of generation, it is not covered by this listing. However, it would act as a traditional listing if a paint manufacturing liquid waste generated at a paint manufacturing facility meets or exceeds the listing levels, in that liquids derived from K180 remain subject to the listing even if they fall below those levels through dilution or treatment. We are proposing that liquid residuals from K180 wastes would remain hazardous, because the surface impoundment scenario we used to set the listing concentrations for K180 assumed that the liquid paint wastes are mixed with other wastewaters in an off-site treatment facility. The listing levels we set for K180 are for the waste prior to any mixing and would necessarily be higher than the levels of the constituents that may exist in the off-site impoundment. We believe that the listing levels for K180 would not be appropriate for use in exiting the RCRA hazardous waste regulatory program, because they do not correspond to risk-based levels for the diluted waste in the impoundment.[41] Therefore, we are proposing that any liquid wastes derived from K180 would remain listed as K180 (unless the waste is excluded under the petition process set out in §§ 261.20 and 261.22, typically known as ''delisting'').

We are proposing that the scope of the listings reflect the practical situations that arise at the site of paint manufacturing if derived-from wastes are in a different form than the original paint waste, i.e., if liquid wastes are derived from K179, and if waste solids are derived from K180. In such cases, we believe that is more appropriate to evaluate these on-site derived-from wastes against the listing concentrations that reflect the corresponding waste form. Solids generated from K180 at the site of paint manufacturing would no longer be K180, but would be subject to classification as K179, if the waste meet or exceed the listing levels for K179. Under this approach, solids generated from K180 on-site that are below the listing levels for K179 would not be a hazardous paint waste. Similarly, a liquid waste derived from K179 at the site of paint manufacturing would be evaluated against the K180 listing conditions; if such a liquid is either managed exclusively in tanks or containers, or if the constituents in the liquid are below the listing levels for K180, the K179-derived liquid would not be hazardous paint waste. We have included text in the listing descriptions for K179 and K180 to establish these changes in waste codes for on-site derived-from wastes.

We are not proposing that the above change in waste codes would apply to waste residuals generated off-site. We believe that changes in waste codes would be confusing for off-site treatment facilities and may be difficult to track and enforce. Furthermore, K179 or K180 wastes that are sent off-site for treatment would likely be treated at a facility that accepts and treats a wide variety of hazardous wastes, and any derived-from wastes generated from treatment of K179 or K180 would likely carry multiple hazardous waste codes. Therefore, we are proposing to allow the mixture-derived from rules to operate normally off-site, except for the exemption for treated K179 noted previously. This approach still allows a treatment facility to use the exemption to the derived-from rule we are proposing for waste solids (K179); the treatment facility would have to treat only for the K179 hazardous constituents of concern (provided no new characteristics are imparted by the treatment process).

Finally, we stress that solids and liquids derived off-site from nonhazardous paint manufacturing liquids are not listed paint manufacturing wastes (i.e., not K179 or K180). Such wastes are not paint manufacturing wastes, in that the waste management facility is not directly involved in the manufacture of paint products. Therefore, these wastes would not be subject to the listing criteria for K179 or K180.

G. Relationships of the Proposed Listings to the TC

Fifteen constituents that we assessed for paint manufacturing waste are also constituents covered by the broadly-applicable Toxicity Characteristic (TC). We modeled these constituents, along with the constituents not covered by the TC, to see if for any reason the modeling approach would indicate a significant hazard would be posed that is not already addressed by the TC. This might have occurred, for example, if the windblown dust pathway had produced significantly lower concentrations. However, we found that, with one exception, the concentrations of concern predicted in the paint-waste modeling were above the levels already regulated by the TC.

For the fourteen constituents for which the paint modeling yielded concentrations higher than TC levels, we are not setting levels in this listing, and the TC will continue to apply. We are proposing to retain the more restrictive TC levels for these constituents to protect human health and the environment. The specific levels calculated for paint manufacturing waste for this proposal represent amounts of constituents that can be safely disposed for the relatively small volumes of paint manufacturing waste solids and liquids subject to today's proposed listing. The TC levels, in contrast, broadly address all wastes in the country subject to RCRA Subtitle C. They were designed to protect human health and the environment from the possibility that many waste streams from multiple generators could be disposed of in a single landfill. Consequently, our TC risk assessments reflect much higher waste volumes arising from a broad spectrum of industries and sources. If we analyzed by itself any individual, small-volume waste stream subject to the TC, we might find that it did not pose risks at TC levels. However, a set of smaller waste streams from multiple sources could pose risks if disposed together with other wastes. Consequently, we believe we need to retain the broad, multiple-waste TC approach.[42]

For the remaining constituent, pentachlorophenol, the paint listing modeling results (at the 90th percentile probabilistic level) showed a protective leachable concentration of 66 mg/L. This is slightly lower than the existing TC level (100 mg/L). Upon review of 3007 survey data on prevalence, however, we found that this constituent is not currently used in paint production and it is not likely to be found in paint manufacturing wastes. While pentachlorophenol has apparently been used historically as a biocide in paint formulations, most

[41] Furthermore, wastes that are otherwise prohibited from land disposal may be treated in surface impoundments or series of impoundments that meet certain conditions (see section 268.4).

[42] This is consistent with current EPA regulations regarding ''delisting petitions'' under 40 CFR 260.22(c) and (d). If modeling indicates the waste does not pose a significant hazard, EPA exempts it from the hazardous waste listing. However, as required under the regulations, we do not exempt wastes that exhibit a hazardous waste characteristic.

pesticide uses of this chemical have been halted.[43] In addition, despite the fact that this is a TC constituent, this chemical was not reported in any of the wastes in the 3007 survey data. Given these facts we see no reason to include pentachlorophenol as a listing constituent for paint manufacturing wastes. The TC, of course, would continue to apply to any paint manufacturing waste containing pentachlorophenol, and wastes exceeding the TC level would be regulated as hazardous.

H. What Is the Status of Landfill Leachate From Previously Disposed Wastes?

Leachate derived from the treatment, storage, or disposal of listed hazardous wastes is classified as a hazardous waste by virtue of the ''derived-from'' rule in 40 CFR 261.3(c)(2). The Agency has been clear in the past that hazardous waste listings apply to wastes disposed of prior to the effective date of a listing, even if the landfill ceases disposal of the waste when the waste becomes hazardous. (See 53 FR 31147, August 17, 1988). We also have a well-established interpretation that listings apply to leachate derived from the disposal of listed hazardous wastes, including leachate derived from wastes meeting the listing descriptions that were disposed before the effective date of a listing. We are not reopening nor taking comment on any of these issues with this proposed rulemaking.

Of course, as set out in detail in the August 1988 notice, this does not mean that landfills holding wastes that are listed now as hazardous become subject to Subtitle C regulation. However, previously disposed wastes now meeting a listing description, including residues such as leachate that are derived from such wastes, and that are managed actively do become subject to Subtitle C regulation. See 53 FR at 31149, August 17, 1988. In many, indeed most, circumstances, active management of leachate would be exempt from Subtitle C regulation because the usual pattern of management is discharged either to POTWs via the sewer system, where leachate mixes with domestic sewage and is excluded from RCRA jurisdiction (see RCRA section 1004(27) and 40 CFR 261.4(a)(1)), or to navigable waters, also excluded from RCRA jurisdiction (see RCRA section 1004(27) and 40 CFR 261.4(a)(2)). In addition, management of leachate in wastewater treatment tanks prior to discharge under the CWA is exempt from RCRA regulation (40 CFR 264.1(g)(6)).

It is possible that waste solids within the proposed scope of K179 may have been disposed in landfills. Because we are proposing that liquids derived from the offsite management of K179 would continue to carry the K179 waste code, leachate from a landfill that accepted paint manufacturing waste solids might be classified as K179. While we do not believe that it is likely that liquid K180 wastes would have been disposed in landfills in significant quantities, a landfill may have accepted a derived-from K180 solid (as a result of offsite treatment). However, the proposed listings for the two paint manufacturing wastes are concentration-based listings, and it would be difficult to know whether the previously disposed wastes that meet the narrative description of K179 did in fact have constituent concentrations that would be at or above the K179 listing levels. We don't anticipate that records documenting the concentrations of proposed constituents of concern for these wastes exist for previously disposed wastes. Therefore, absent a finding that the disposed wastes would have met the listing being proposed today, it is unlikely that the previously disposed wastes would be classified as K179, and thus unlikely that landfill leachate and gas condensate derived from these wastes that are actively managed would be K179.

However, if actively managed landfill leachate and gas condensate derived from the newly-listed wastes proposed for listing in today's notice could be classified as K179, we would be concerned about the potential disruption in current leachate management that could occur, and the possibility of redundant regulation. This issue was raised to the Agency in the context of the petroleum refinery waste listings (see 63 FR 42173, August 6, 1998). A commenter expressed concern that, because some of the commenter's nonhazardous waste landfills received newly-listed petroleum wastes prior to the effective date of the listing decision, the leachate that is collected and managed from these landfills would be classified as hazardous. The commenter argued that this could lead to vastly increased treatment and disposal costs without necessarily any environmental benefit. After examining and seeking comment on this issue, we published a final rule that temporarily defers regulation of landfill leachate and gas condensate derived from certain listed petroleum refining wastes (K169–K172) that were disposed before, but not after, the new listings became effective, provided certain conditions are met. See 64 FR 6806, February 11, 1999. We proposed listing determinations for wastes from the dye and pigment industries (64 FR 40192, July 23, 1999) and from the inorganic chemical manufacturing industries (65 FR 55684, September 14, 2000) that propose deferrals for similar wastes derived from landfills. We also promulgated a listing determination for the chlorinated aliphatics industry (65 FR 67068, November 8, 2000) that retains the deferral.

At the time this issue was brought to the Agency's attention in the context of the petroleum refinery waste listings, EPA's Office of Water had recently proposed national effluent limitations guidelines and pretreatment standards for wastewater discharges—most notably, leachate—from certain types of landfills. See 63 FR 6426, February 6, 1998. In support of this proposal, EPA conducted a study of the volume and chemical composition of wastewaters generated by both subtitle C (hazardous waste) and Subtitle D (nonhazardous waste) landfills, including treatment technologies and management practices currently in use. Most pertinent to finalizing the temporary deferral for the petroleum refining wastes, EPA did not propose (or subsequently finalize) pretreatment standards for subtitle D landfill wastewaters sent to POTWs because the Agency's information indicated that such standards were not required (see 65 FR 3008, January 19, 2000).

The conditions included in the temporary deferral we published on February 11, 1999 are that the leachate is subject to regulation under the Clean Water Act, and the leachate cannot be stored in surface impoundments after a period of two years (February 13, 2001). See 40 CFR 261.4(b)(15). We believe that it was appropriate to temporarily defer the application of the new waste codes to such leachate in order to avoid disruption of ongoing leachate management activities while the Agency decides if any further integration is needed of the RCRA and CWA regulations consistent with RCRA section 1006(b)(1). We believe that it is still appropriate to defer regulation and avoid leachate management activities, and to permit the Agency to decide whether any further integration of the two programs is needed. As such, we would be concerned about forcing pretreatment of leachate even though pretreatment is neither required by the CWA, nor needed. Therefore, we are proposing to temporarily defer the regulation of landfill leachate and gas condensate derived from management of K179 and K180 wastes that we are

[43] See the cancellation for non-wood uses at 52 FR 2282, January 21, 1987.

proposing for listing in today's rule, with the same conditions as described in 40 CFR 261.4(b)(15) for petroleum wastes. We request comment on this proposed conditional deferral.

V. Proposed Generator Requirements for Implementation of Concentration-Based Listings

We are proposing that these concentration-based listings be self-implementing. This means that you (the waste generator) would be responsible for determining whether or not your wastes are K179 or K180 listed hazardous wastes at the point of generation based on the proposed procedures we describe below.[44] We are proposing a two-tiered implementation approach for the concentration-based listings, based on waste form (liquids or solids) and total annual quantity of the paint manufacturing wastes generated at each paint production facility, that you could use to determine whether your wastes are nonhazardous. Before using the proposed two-tiered approach, you would determine if any of your paint manufacturing waste solids or paint manufacturing waste liquids could contain any of the constituents of concern identified for these types of wastes (see Tables IV.A–1 and IV.A–2). We are proposing that you could use knowledge of your wastes (e.g., knowledge of the constituents in your wastes based on existing sampling and analysis data and/or information about raw materials used, production processes used, and degradation products formed) to make this initial determination regardless of the quantity of waste you generate. If any portion of your wastes at the point of generation will not contain any of the constituents of concern identified for your specific type of wastes, you would not have to use the two-tiered approach to determine whether those wastes are nonhazardous (i.e., are not K179 or K180 listed wastes). Paint manufacturing wastes described in the K179 or K180 listings, but which do not contain any of the constituents of concern for K179 or K180, would not be K179 or K180 hazardous wastes at the point of generation. You should note, however, that absence of the constituents of concern in some portion of your wastes would not relieve you, the generator, from hazardous waste determination requirements for all other wastes that do contain constituents of concern.

If your paint manufacturing wastes contain one or more constituents of concern, then you would either use the two-tiered approach to determine whether they are nonhazardous or handle them as hazardous. Under this proposed approach, if you generate or expect to generate 40 metric tons or less of paint manufacturing waste solids or 100 metric tons or less of paint manufacturing waste liquids annually, then you would have the option of testing the wastes or using knowledge of the wastes to determine whether they are nonhazardous. However, if you generate or expect to generate over 40 metric tons of paint manufacturing waste solids or over 100 metric tons of paint manufacturing waste liquids, then you would be required to test the wastes annually to determine whether they are nonhazardous. Our reasons for proposing a two-tiered approach and requiring annual testing of larger quantity wastes are discussed in Section V.C. The exception to the annual testing requirement to determine whether wastes are nonhazardous, regardless of annual waste quantities generated, would be for paint manufacturing waste liquids that are stored or treated exclusively in tanks or containers and then discharged to a POTW or under a NPDES permit.

We are proposing the constituents of concern for the two types of wastes (solids and liquids) from paint production that are listed in Tables IV.A–1 and IV.A–2. We are also proposing the listing (hazardous concentration) level for each of these constituents that are in the same tables. We are proposing that you use this information, in conjunction with testing or knowledge of constituent levels in your wastes, to determine whether or not the wastes are hazardous.

Unless you make a determination that your wastes are nonhazardous for K179 or K180, using either knowledge that the wastes do not contain any of the constituents of concern or the specified procedures described in section C below, then we are proposing that your wastes would be hazardous and you would be subject to the existing requirements under RCRA for persons who generate hazardous waste. Thus, if you are not already a hazardous waste generator, you would have to notify the EPA, according to section 3010 of RCRA, that you generate a hazardous waste. You would also be subject to all applicable requirements for hazardous waste generators in 40 CFR Part 262.

If you determine that your paint manufacturing waste solids or liquids are nonhazardous, we are proposing to require, under the authority of sections 2002 and 3007 of RCRA, that you keep certain records (see Section E below) of your wastes at the generating site (on-site). Following the initial nonhazardous determination, you would be obligated to ensure that your wastes continue to meet all of the proposed conditions and requirements for the wastes to be deemed nonhazardous. Accordingly, you should also note that regardless of any type of nonhazardous determination that you make for your wastes, the wastes would be hazardous if we test and find that they actually have constituents of concern at or above the listing levels.

A. Would I Have to Determine Whether or Not My Wastes Are Hazardous?

Yes, we are proposing that you must determine whether or not your wastes are hazardous K179 or K180 wastes. This hazardous waste listing determination could be made in either of two ways. First, you could assume that your wastes are hazardous at the point of generation. If you do this, then you could forego the requirement for testing or using knowledge of the wastes to make a hazardous waste determination. In such a case, your wastes would be subject to all applicable RCRA Subtitle C hazardous waste requirements, including LDR requirements, either as of effective date of the final rule or as of initial generation of the wastes. Second, if you want the opportunity to determine that your wastes are nonhazardous at the point of generation (and therefore not subject to Subtitle C hazardous waste requirements), we are proposing that you must either test the wastes or use knowledge of constituent concentrations in the wastes using the procedures described in Section C below. The only exception to using procedures in Section C to determine that your wastes are nonhazardous would be if you generate paint manufacturing waste liquids that will be stored or treated exclusively in tanks or containers.

B. How Would I Manage My Wastes During The Period Between the Effective Date of The Final Rule and Initial Hazardous Waste Determination for My Wastes?

If you generate wastes that are described in either K179 or K180, we are proposing that you could not dispose of your wastes as nonhazardous until you complete an initial determination which shows that your wastes are nonhazardous except for

[44] Due to the uncertainties in our assessment of the management of paint manufacturing waste liquids in surface impoundments, we are considering an alternative proposal not to list paint manufacturing waste liquids. We describe this alternative elsewhere in this notice (see Section IV.D). The following discussion describes the approach we are proposing for paint manufacturing waste liquids if K180 is listed.

waste liquids managed exclusively in tanks or containers prior to discharge to a POTW or under a NPDES permit. In the interim (from the time you generate the wastes to the time you make a determination on your wastes), you would be responsible for storing your wastes properly. If your wastes are determined to be hazardous and you are not complying with the Subtitle C storage requirements during the interim period, then you would be subject to an enforcement action for improper storage.

C. What Procedures Would I Follow to Determine If My Wastes Are Nonhazardous?

We are proposing that you use the following procedures annually to determine if your wastes, which contain one or more constituents of concern, are nonhazardous at the point of generation:

1. You must use the previous year's waste generation data (previous 12 consecutive months) or, if this data is not available, estimate the total annual quantities of paint manufacturing waste solids and paint manufacturing waste liquids that you expect to generate over the next 12 consecutive months based on current knowledge. You must combine the quantities of hazardous wastes (characteristic and otherwise listed) and nonhazardous wastes that meet the listing description for K179 or K180 to separately determine the total annual waste quantities for both the paint manufacturing waste solids and paint manufacturing waste liquids. Then, you must record the total annual quantities of paint manufacturing waste solids and paint manufacturing waste liquids that you expect to generate. If you initially estimate that your waste generation would fall under the low volume tier and, at any time within the 12 month period, the actual quantities of wastes you generate fall within the upper volume tier, from that point, you would be subject to the upper tier waste analysis requirements (see step 2 below). If you have not already tested your wastes, you must test your wastes. We are proposing that a new 12 month period for hazardous waste determination would start when you actually exceed the lower volume tier limit.

2. You must use the recorded total annual quantities of paint manufacturing waste solids and paint manufacturing waste liquids generated by your facility to determine the appropriate annual waste analysis requirement for your wastes in accordance with the following tables:

TABLE V.C–1.—TIERED WASTE ANALYSIS REQUIREMENTS FOR SOLIDS

Total annual quantity of hazardous and nonhazardous paint manufacturing waste solids	Annual waste analysis requirement
40 metric tons and less	Test Wastes or Use knowledge of Wastes.
Over 40 metric tons	Test Wastes.

TABLE V.C–2.—TIERED WASTE ANALYSIS REQUIREMENTS FOR LIQUIDS

Total annual quantity of hazardous and nonhazardous paint manufacturing waste liquids	Annual waste analysis requirement [a]
100 metric tons and less	Test Wastes or Use knowledge of Wastes.
Over 100 metric tons	Test Wastes.

[a] This requirement does not apply if the liquid wastes are stored or treated exclusively in tanks or containers and then sent to POTW or discharged under a NPDES permit.

We are proposing to establish the volume cut-offs in the above tables based on the § 3007 survey data on the annual quantities of solid and liquid wastes generated by paint production facilities. We used these data to develop the distributions for total hazardous and nonhazardous solid and total hazardous and nonhazardous liquid waste quantities generated across the sampled population of paint production facilities (see docket for Document on Distributions of Paint Production Wastes Generated). It was evident from these distributions that a relatively large percentage of the total hazardous and nonhazardous paint manufacturing wastes are generated by a relatively small percentage of the paint production facilities. For both paint manufacturing waste solids and liquids, approximately 90 percent of the total hazardous and nonhazardous wastes are generated by fewer than 20 percent of the paint production facilities. Based on this observation and in order to minimize the burden on small generators, we decided to propose this two-tiered implementation approach for the concentration-based listings. The tiered approach will allow small generators the option of testing or using knowledge of their wastes to determine whether or not their wastes are hazardous.

The annual quantity cut-off for wastes above which testing is required (40 metric tons for waste solids and 100 metric tons for waste liquids) is intended to ensure that the largest quantities of wastes generated by paint production facilities are tested and, at the same time, to minimize the burden on small generators. Using the cut-off quantities should result in approximately 90 percent of the total hazardous and nonhazardous paint manufacturing waste solids and paint manufacturing waste liquids being tested annually. Using the cut-off quantities also means that fewer than 20 percent of the facilities would be required to test their wastes annually, and more than 80 percent of the facilities would have the option of using knowledge. We believe that larger quantities of wastes have the potential for posing greater environmental risk than smaller quantities of wastes if a nonhazardous determination based on knowledge turns out to be inaccurate. Therefore, we believe it is reasonable to require larger quantity waste generators to test their wastes annually to make a determination, while smaller quantity waste generators are given the option to either test their wastes or use knowledge of their wastes annually to make a determination. We request comment on the appropriateness of giving smaller quantity waste generators the option of using knowledge of their wastes annually. We will consider requiring smaller quantity waste generators to test their wastes annually, like the larger quantity waste generators, if significant and defensible arguments are presented by commenters to support these requirements as necessary and appropriate.

We also request comment on an alternative to the two-tiered implementation approach discussed above for implementing the concentration-based listings proposed in today's rule. We could adopt a more streamlined approach for waste generators to use in implementing the

concentration-based listings for these wastes. The streamlined implementation approach would allow you to rely on process knowledge or testing (i.e., lower volume tier requirements) regardless of the volume of waste generated. If the wastes contain any constituent of concern at or above the final risk-based listing levels, the waste would be subject to Subtitle C requirements. The streamlined implementation approach would be similar to the existing program for determining whether a waste exhibits a hazardous characteristic. Although we prefer the two-tiered approach being proposed in today's rule, we will give careful consideration to any arguments presented or relevant waste analysis data submitted in response to today's proposal (e.g., data showing that only a small portion of the waste streams in the industry exceed the listing levels) in order to decide whether a more streamlined approach is warranted.

1. Testing Wastes

If the total annual quantity of your paint manufacturing waste solids or paint manufacturing waste liquids which meet the listing description of K179 or K180 falls into the tier where testing is required (and you have decided not to assume that your wastes are hazardous at the point of generation), we are proposing that you must test your wastes to determine whether they are nonhazardous. (Even if testing is required to determine that your wastes are nonhazardous, you could still use knowledge of your wastes to document that a constituent (or constituents) could not be present in your wastes and not test for that constituent (or constituents)). However, knowledge of the wastes could not be used to determine the level of constituent in your wastes.

For those wastes that you must test, we are proposing that you use the following procedures:

(i) Develop a waste sampling and analysis plan (if you do not already have one that is appropriate) to collect and analyze samples that are representative of your wastes. We discuss the waste sampling and analysis plan later in this section.

(ii) From the list of constituents of concern for paint manufacturing waste solids or paint manufacturing waste liquids, select the constituents that are reasonably expected to be present in your wastes based on your knowledge of the wastes (e.g., knowledge of the constituents in your wastes based on existing sampling and analysis data and/or information about raw materials used, production processes used, and degradation products formed).

(iii) Collect an appropriate number of samples that are representative of your wastes and analyze each for the constituents of concern selected in step (ii).

(iv) Compare the sampling and analysis results for the constituents of concern in your wastes to the listing levels established for these constituents to determine if your wastes are nonhazardous.

(v) After completing annual testing requirements for your wastes, if all samples taken during any three consecutive years are determined to be nonhazardous, then the annual testing requirements for your wastes are suspended.

(vi) After suspension of the annual testing requirements for your wastes, if paint manufacturing, formulation, or waste treatment processes are significantly altered (i.e., if it could result in significantly higher levels of the constituents of concern for K179 or K180), then the annual testing requirements for your wastes are reinstituted. In order to again suspend the annual testing requirements for your wastes, the requirement under step (v) above has to be met.

a. *Waste Sampling and Analysis Plan.* Whenever you are required to test, we are proposing that you must develop a waste sampling and analysis plan prior to testing your wastes. In developing a sampling and analysis plan, you would have to consider any expected fluctuations in concentrations of constituents of concern over time. The sample design should be described in the waste analysis plan. The sample design and the sensitivity of the analytical methods used should be sufficient to determine whether the levels of the constituents of concern in the wastes are above or below the listing concentrations for these constituents. We do not propose to specify a particular number of samples that you would need to collect annually to obtain representative data for your wastes. The number of samples required to determine that the concentrations of constituents of concern in your wastes are below the listing levels for these constituents would depend on how close the actual concentrations were to the listing concentrations and on the variability of the wastes you generated during the course of the year.

As stated in step (ii) of the procedures specified above, you would have to test for the constituents of concern that are reasonably expected to be present in your wastes. Also, as discussed previously, you might use knowledge of the wastes to document that a constituent (or constituents) could not be present in your wastes. If you determine that a constituent (or constituents) could not be present in your wastes, then you would not need to test for it. However, if you determine that your wastes are nonhazardous, then you would be responsible for ensuring that your wastes do not have any constituents of concern at or above the listing levels.

We are not proposing whether you must use grab or composite sampling to obtain samples that are representative of your wastes. However, we are proposing that, following a nonhazardous determination for your wastes, enforcement by EPA or an authorized State would be based on grab samples. It would be your responsibility to ensure that your sampling and analysis is unbiased, precise, and representative of your wastes. We are not proposing to require the use of SW–846 methods to comply with these requirements. We are proposing to allow the use of either SW–846 methods or alternative methods, so long as you can demonstrate that the selected methods have the appropriate sensitivity, bias, and precision to determine the presence or absence of the constituents of concern at or below the listing concentrations. You would be required to document the: (1) Detailed standard operating procedures (SOPs) for the sampling and analysis protocols that you used; (2) sensitivity and bias of the measurement process; (3) precision of the analytical results for each batch of waste (or ''super'' batch) tested; and (4) analytical results.

We would consider the analytical results adequate to demonstrate that concentrations for the constituents of concern in your wastes are below the listing concentrations for these constituents if: (1) You determined the concentrations without dilution of the wastes (i.e., no waste or other material were added to your wastes, after the point of generation, which did not meet the listing description of K179 or K180) and (2) you conducted an analysis in which the constituents of concern spiked at their listing levels indicates that the constituents of concern are present at those levels within analytical method performance limits (e.g., sensitivity, bias, and precision). To determine the performance limits for a method, we recommend following quality control (QC) guidance provided in Chapters One and Two of SW–846.

Following sampling and analysis, if none of your waste samples contain any of the constituents of concern at concentrations equal to or greater than the listing levels established for these constituents, then you would determine that your tested wastes are nonhazardous. Once you have determined your tested wastes to be nonhazardous, you would decide if these wastes are representative of the wastes that you will generate for the remainder of the year. If your tested wastes are representative (or you can

reliably determine that these wastes exhibited the maximum concentrations for the constituents of concern), then you could determine that the wastes (or certain type of wastes) that you generate for the remainder of the year are also nonhazardous. As stated earlier, following a nonhazardous determination, you would have an obligation to ensure that your wastes continue to meet all of the conditions (i.e., constituents of concern in your wastes remain below listing levels) and requirements (i.e., records that support a nonhazardous determination) for the wastes to be deemed nonhazardous. We are also proposing annual follow-up sampling and analysis for wastes that you determine to be nonhazardous to check that these wastes continue to remain nonhazardous. However, if any of your waste samples contain any of the constituents of concern at a concentration equal to or greater than the listing level set for that constituent, your wastes would be listed hazardous wastes and are thereby subject to all applicable RCRA Subtitle C hazardous waste requirements.

We are proposing that the maximum concentration of any constituent detected in any sample must be below the established listing level in order for you to determine that the waste is nonhazardous. We are proposing this approach because we believe it is the most straightforward to ensuring concentrations are below risk-based listing levels. However, we request comment on whether the generator should be allowed to average the concentrations of constituents detected in multiple waste samples taken from some quantity of waste generated or collected over a certain period of time (e.g., 60 days). Under that approach, the generator would calculate concentrations using an upper confidence limit on the mean (e.g., 95th percentile) to compare to the listing levels established for the constituents.

We also request comment on whether the annual testing requirement should be continued beyond three years, if the generator determines the wastes to be nonhazardous for three consecutive years. Following suspension of annual testing requirements, the generator would still be liable if testing by EPA or an authorized State finds the waste to be hazardous.

2. Using Knowledge of The Wastes

Where testing is not required, or as a supplement to testing, we are proposing that you could use knowledge of your wastes (e.g., knowledge of the constituents in your wastes based on existing sampling and analysis data and/or information about raw materials used, production processes used, and degradation products formed) to conclude that concentrations for the constituents of concern in your waste would be below the listing levels (nonhazardous waste).

D. How Would The Proposed Contingent Management Listing for Liquid Wastes be Implemented?

Under this proposed listing, paint manufacturing waste liquids that meet the K180 listing description would be hazardous wastes unless managed exclusively in tanks or containers prior to discharge to a POTW or under a NPDES permit. If your liquid paint manufacturing wastes are going to be stored or treated in units other than tanks or containers, then they would be hazardous wastes unless you have determined (using the procedures described in Section C) that the constituents of concern in the waste liquids are below the listing levels. Therefore, you would need to determine as soon as the paint manufacturing waste liquids are generated whether they will be stored or treated in units other than tanks or containers. If your paint manufacturing waste liquids will be stored or treated in units other than tanks or containers, your wastes would be subject to the management requirements discussed in Section B above. If you are storing or treating paint manufacturing waste liquids on-site in tanks or containers prior to off-site disposal, you would need to maintain documentation showing that the wastes will be stored or treated exclusively in tanks or containers off-site prior to their discharge to a POTW or discharge under a NPDES permit. If the off-site disposal facility does not store or treat your paint manufacturing wastes exclusively in tanks or containers and the waste contains levels of constituents at or above the risk-based listing levels, then your wastes would be hazardous and you would need to store the wastes in accordance with the Subtitle C requirements applicable to storage of a hazardous waste.

E. What Records Would I Need to Keep On-site to Support a Nonhazardous Determination for My Wastes?

To support a nonhazardous determination, we are proposing that you must keep records of the total annual quantity of paint production waste solids and liquids from tank and equipment cleaning operations that use solvents, water, and/or caustic; emission control dusts or sludges; wastewater treatment sludges and off specification product for the most recent three years from the effective date of the final rule. If you generate a total annual quantity of paint manufacturing wastes that exceeds 40 metric tons for paint manufacturing waste solids or 100 metric tons for paint manufacturing waste liquids, we are proposing that you keep the following records on-site for the most recent three years:

1. The documentation supporting a determination that wastes are nonhazardous based on knowledge that they do not contain any of the constituents of concern.

2. If you determine that wastes are nonhazardous based on testing, then you must keep the following records on-site:

a. The sampling and analysis plan used for collecting and analyzing samples representative of your wastes, including detailed sampling methods used to account for spatial and temporal variability of the wastes, and sample preparative, cleanup (if necessary) and determinative methods.

b. The sampling and analysis data (including QA/QC data) and knowledge (if used to determine that one or more constituents of concern are not present in the wastes) that support a nonhazardous determination for your wastes (for the most recent three years of testing).

3. If storing or treating paint manufacturing waste liquids on-site in tanks or containers prior to off-site disposal, the documentation showing that the paint manufacturing waste liquids will be stored or treated solely in tanks or containers off-site before discharge by a facility to a POTW or discharge under an NPDES permit.

We request comment on the adequacy of the above recordkeeping requirements to support a nonhazardous determination.

F. What Would Happen if I Do Not Meet The Recordkeeping Requirements for The Wastes That I Have Determined Are Nonhazardous?

We are proposing to require recordkeeping under the authority of sections 2002 and 3007 of RCRA. These are requirements and not conditions of the waste being nonhazardous. A condition is a standard that you or your waste must meet in order for your waste to become or remain nonhazardous. If a condition is not fulfilled, then the waste is hazardous and subject to RCRA Subtitle C requirements. A requirement is an obligation whose violation would not affect the nonhazardous status of the waste, but would be a violation under RCRA. Failure to comply with these requirements could result in an enforcement action under section 3008 of RCRA. This section of the statute authorizes the imposition of civil penalties in an amount up to $27,500 for each day of noncompliance.

G. Could I Treat My Wastes to Below Listing Concentrations and Then Determine That My Wastes Are Nonhazardous?

1. Paint Manufacturing Waste Solids

If your paint manufacturing waste solids are hazardous (K179) at the point of generation, we are proposing that you could treat the wastes to make them nonhazardous (i.e., remove the K179 hazardous waste code from your wastes). However, if your wastes are K179, they would be required to be treated to meet the proposed LDR treatment standards (see Section VI D.) before placement in a land-based unit. Following LDR treatment, you could choose to use the initial hazardous waste determination procedures for K179 wastes (see Section C above) to determine if your treated waste residuals are nonhazardous. If your treated waste residuals are determined to be nonhazardous, they would no longer be subject to the requirements of Subtitle C. In other words, the derived from hazardous waste code would no longer attach to such treatment residuals.

2. Paint Manufacturing Waste Liquids

If your paint manufacturing waste liquids are hazardous (K180) at the point of generation because the concentration of the constituents of concern are not below the listing levels and they are not stored or treated solely in tanks or containers prior to discharge, then they would also be required to be treated to meet the proposed LDR treatment standards (see Section VI.D). However, we are proposing that the treatment of the K180 liquid wastes (e.g., to meet the proposed LDR treatment standards) would not result in the removal of the K180 hazardous waste code from your liquid residual wastes. This is because the proposed listing levels for K180 are for the waste prior to any mixing and would necessarily be higher than the levels of the constituents that may exit in the liquid paint wastes mixed with other wastewaters in an off-site impoundment. Therefore, we believe that the use of listing levels for K180 would not protect against paint manufacturing waste liquids being placed on land.

VI. Proposed Treatment Standards Under RCRA's Land Disposal Restrictions (LDRs)

A. What Are EPA's LDRs?

The RCRA statute requires EPA to establish treatment standards for all wastes destined for land disposal. These are the so called ''land disposal restrictions'' or LDRs. For any hazardous waste identified or listed after November 8, 1984, EPA must promulgate LDR prohibitions and treatment standards within six months of the date of identification or final listing (RCRA section 3004(g)(4), 42 U.S.C. 6924(g)(4)). RCRA also requires EPA to set as these treatment standards ''* * * levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.'' RCRA section 3004(m)(1), 42 U.S.C. 6924(m)(1). Once a hazardous waste is prohibited, 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 satisfies 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), (f), and (g)(5).

B. How Does EPA Develop LDR Treatment Standards?

To establish LDR treatment standards, EPA first identifies the best demonstrated available technology (BDAT) for the hazardous constituents present in the hazardous waste, and then determines what constituent concentrations can be achieved by the technology or technologies identified as BDAT.

EPA typically has established treatment standards based on performance data from the treatment of the waste at issue, if such data are available, and also from the treatment of wastes with similar chemical and physical characteristics or similar concentrations of hazardous constituents. Treatment standards typically cover both wastewater and nonwastewater waste forms on a constituent-specific basis. The constituents selected for regulation under the LDR program are not necessarily limited to those present in a proposed listing, but also may include those constituents or parameters that will ensure that treatment technologies are operated properly. For listed waste EPA identifies these as ''regulated constituents'' and they appear individually in the Table at 40 CFR 268.40, along with their respective treatment standards.

EPA may develop and promulgate either technology-specific treatment standards or numerical treatment standards. Should EPA elect to use technology-specific standards (*i.e.,* mandate use of a particular type of treatment technology), all wastes that meet the listing designations would have to be treated by the technology or technologies specified before disposal. These technologies are also identified in the Table at § 268.40 and are further described in § 268.42. Should EPA elect to use numerical treatment standards, the Agency allows the use of any technology (other than impermissible dilution) to comply with the treatment standards.

With the advent of the so-called Universal Treatment Standards (UTS) (the same numerical standards for common hazardous constituents in all prohibited hazardous wastes), EPA has somewhat refined this approach. Thus some of the evaluation of treatability goes to the issue of how well the UTS express potential treatability of a prohibited hazardous waste. Given that the UTS typically reflect performance of the best treatment technologies and minimizing threats, and the enormous savings in administrative expense to both the regulated communities and to EPA, EPA seeks to apply the UTS wherever technically justified. See generally 59 FR 47988–991 (September 19, 1994).

After developing the LDR treatment standards, we must also determine if adequate treatment capacity is available to treat the expected volumes of wastes. If so, the LDR treatment standards become effective essentially at the same time a listing does. If not, EPA may grant up to a two-year national capacity variance (NCV) during which time the LDR treatment standards are not effective.

For a more detailed overview of the Agency's approach for developing treatment standards for hazardous wastes, see the final rule on solvents and dioxins (51 FR 40572, November 7, 1986) and section III.A.1 of the preamble to the final rule that set land disposal restrictions for the ''Third Third'' wastes (55 FR 22535, June 1, 1990). EPA also has explained its BDAT procedures in ''Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology (EPA/OSW, October 23, 1991)''. This document is available in the docket supporting this rulemaking.

C. What Treatment Standards Are Proposed?

For the hazardous constituents found in wastes from the manufacture of

paints, hazardous waste numbers K179 and K180, we are proposing to transfer existing numerical or universal treatment standards to the hazardous constituents identified in the wastes, with the exception of formaldehyde and styrene. We believe that it is technically feasible to apply these existing numerical standards to the hazardous constituents of K179 and K180, because the waste compositions are similar to other wastes for which applicable treatment technologies have been demonstrated. Due to the uncertainties in our assessment of the management of paint manufacturing waste liquids in surface impoundments, we are also considering an alternative proposal not to list paint manufacturing waste liquids. We describe this alternative elsewhere in this notice (see Section IV.D). If we do not list wastes under K180, then there would be no need for any standards for formaldehyde or styrene. The following discussion describes the approach for treatment standards assuming that paint manufacturing waste liquids are listed under K180.

The hazardous constituents formaldehyde and styrene do not have existing numerical standards. For formaldehyde, we are proposing to require treatment by designated methods. When formaldehyde is present in K180 at levels triggering the listing, formaldehyde thus would be treated by the required technologies. (The other hazardous constituents must, of course, be treated to meet the applicable numerical standards.) Wastes that do not trigger the listing based on formaldehyde would not be subject to the formaldehyde technology requirement, but would be subject to all other numerical standards. The technology standards proposed for formaldehyde-listed K180 wastewaters are wet air oxidation (WETOX) or chemical or electrolytic oxidation (CHOXD) followed by carbon adsorption (CARBN); or combustion (CMBST). For nonwastewaters forms of K180, the technology standard proposed is combustion. These are the same treatment standards currently applicable to discarded product, off specification, container residues, and spill residues of formaldehyde (EPA hazardous waste U122).

For styrene, we are proposing numerical standards developed for this rulemaking. We are proposing a wastewater standard of 0.028 mg/L based on activated sludge treatment and a nonwastewater standard of 28.0 mg/kg based on thermal destruction of sludge. Alternatively, we propose the transfer of the ethylbenzene treatment standards of 0.057 mg/L for wastewaters, and 10 mg/kg for nonwastewaters, because of its structural similarity and similar physical properties with styrene similar treatment technologies have been demonstrated. Ethylbenzene and styrene have the same number of carbon atoms, and differ only in that styrene has one additional double bond and hence two fewer hydrogen atoms in its structure. See supporting background documents for the additional discussion on the derivation of the UTS for this new constituent.

Wastes identified as K179 or K180 may already be subject to hazardous waste regulation, because they exhibit a characteristic or are listed F001–F005 wastes. If promulgated, the treatment standards for K179 and K180 will apply in addition to any treatment requirements the wastes are currently subject to. Section 268.9(b) of current rules states that if a treatment standard for a listed waste which also exhibits a characteristic addresses the hazardous constituent which causes the waste to exhibit the characteristic, then, the waste is only subject to the treatment standard for the listed waste. Applied to these paint manufacturing wastes, therefore, the most likely result is that these wastes would be subject only to the treatment standards for K179 and K180 assuming that presence of organic hazardous constituents addressed in the treatment standard for the listed waste causes these wastes to exhibit a characteristic.

The treatment standards proposed are based on technology performance and not upon the listing levels of concern derived from the Paint Risk Assessment. In the Hazardous Waste Identification Rule proposed November 19, 1999, we outlined ways in which the HWIR risk assessment could be used to develop risk-based LDR levels (see 64 FR 63444, November 19, 1999), because the HWIR risk assessment evaluated the potential for constituent migration through the most significant environmental fate and transport pathways, looked at the total impact of those pathways, and considered a great number of ecological benchmarks. In the Paint Risk Assessment, we also have a substantial multipathway risk assessment that could potentially lead to treatment standards which could be either more lenient or stricter than current standards.

However, the listing levels proposed for K180 are for the waste prior to any mixing, and would necessarily be higher than the levels of the constituents that may exist in the off-site impoundment. Therefore, we believe the listing levels for K180 may not be appropriate for use in estimating minimized threat levels, because they do not correspond to risk-based levels for the diluted waste in the impoundment. The levels indicated would not be applicable as ''universal'' risk-based treatment standards (as we hope HWIR could eventually be).

Our preference is to develop a single set of treatment levels that would be applicable to all hazardous wastes. Waste-by-waste modeling would not only be highly resource intensive, but could lead to the potentially false conclusion that higher levels are justified only to realize that if we look at a range of wastes together we might conclude that more stringent treatment standards are needed to minimize threat to human health and the environment. Therefore, we believe the proposed listing levels are not minimized threat levels across all wastes and have chosen to propose treatment standards based on the performance of the best determined available technology (BDAT). We believe that there is still uncertainty as to what quantified levels minimize threats to human health and the environment, and therefore, we are proposing standards based on the performance of the BDAT. See *HWTC* vs. *EPA*.886 f. 2d 355, 361–63 (D.C. Cir. 1989) (accepting this approach).

The proposed treatment standards are set out in Table VI–1 below. Where EPA is proposing numerical concentration limits the use of any technology capable of achieving the proposed treatment standards would be allowed, except those treatment or reclamation practices constituting land disposal or impermissible dilution (see 40 CFR 268.3). As stated above, when formaldehyde is present in K180 at levels triggering the listing, we are proposing that formaldehyde must be treated by the required technologies. The other hazardous constituents would, of course, be treated to meet the applicable numerical standards.

TABLE VI–1.—TREATMENT STANDARDS FOR HAZARDOUS WASTE K179 AND K180

Regulated hazardous constituent		K179 solids	K180 liquids	Wastewaters	Nonwastewaters
Common name	CAS [1] No.			Concentration in mg/L,[2] or technology code [3]	Concentration in mg/kg [4] unless noted as "mg/L TCLP", or technology code [3]
Acrylamide	79–06–1	X	X	19	23
Acrylonitrile	107–13–1	X	X	0.24	84
n-Butyl alcohol	71–36–3		X	5.6	2.6
Ethyl benzene	100–41–4		X	0.057	10
Formaldehyde [5]	50–00–0		X	(WETOX or CHOXD) fb CARBN; or CMBST.	CMBST
Methylene chloride	75–09–2		X	0.089	30
Methyl isobutyl ketone	108–10–1	X	X	0.14	33
Methyl methacrylate	80–62–6	X	X	0.14	160
Styrene	100–42–5		X	0.028	28
Toluene	108–88–3		X	0.080	10
Xylenes—mixed isomers (sum of o-, m-, and p-xylene concentrations).	1330–20–7		X	0.32	30
Antimony	7440–36–0	X	X	1.9	1.15 mg/L TCLP

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.
[2] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.
[3] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1–Technology Codes and Descriptions of Technology-Based Standards.
[4] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264, Subpart O, or Part 265, Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.
[5] Wastes that do not exceed the § 261.32 listing criteria for this constituent are not subject to the treatment technology requirements, but are subject to all other numerical standards.

D. Other LDR-Related Provisions

1. F039 Multisource Leachate and Universal Treatment Standards

F039 applies to multiple listed hazardous waste landfill leachates in lieu of the original waste codes, and F039 wastes are subject to numerical treatment standards applicable to all listed wastes. To maintain the regulatory implementation benefits of having one waste code for multisource leachate, the treatment standards for F039 must be updated to include the constituents of newly listed wastes. Otherwise, multiple waste codes would again be applicable. Therefore, we propose to add to F039 the additional constituents acrylamide and styrene. We also propose to add the numerical standards for styrene to the Universal Treatment Standards of 40 CFR 268.48 [45] Characteristic wastes are already subject to treatment standards for acrylamide. As a result, characteristic wastes subject to treatment requirements for underlying hazardous constituents will also have to comply with these treatment standards.

We are proposing these changes, because acrylamide and styrene are toxic constituents. When paint manufacturing (or production) wastes are managed with other wastes at commercial treatment facilities, the combined waste residues that result for disposal would need to meet all part 268 requirements, including requirements for C disposal, if the paint listing codes were retained or mixed with other listed wastes. The new listing codes may also be retained if treatment meets only the LDR standards and not the listing levels. Thus, leachates that could be subject to multiple codes could be formed. By adding these constituents to F039, the regulatory benefits of having one waste code for multisource leachate is maintained.

Based on the treatment studies compiled for acrylamide and styrene, we believe the proposed treatment standards for these constituents can readily be achieved in the F039 leachate wastes, and in characteristic wastes. Nevertheless, we request comments on this assumption.

E. Is There Treatment and Management Capacity Available for These Proposed Newly Identified Wastes?

1. What Is a Capacity Determination?

EPA must determine whether adequate alternative treatment capacity exists nationally to manage the wastes subject to LDR treatment standards. RCRA Section 3004(h)(2). Thus, LDRs to be made effective immediately—in this case when the new listings are effective (typically 6 months after the new listings are published in the **Federal Register**)—unless EPA grants a national capacity variance from the otherwise-applicable date and establishes a different date (not to exceed two years beyond the statutory deadline) based on "the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available" (RCRA Section 3004(h)(2), 42 U.S.C. 6924(h)(2)).

Our capacity analysis methodology focuses on the amount of waste currently disposed on the land, which will require alternative or additional treatment as a result of the LDRs. The quantity of wastes that is not disposed on the land, such as treatment in tanks, is not included in the quantities requiring additional treatment as a result of the LDRs. Also, land-disposed

[45] As noted previously, we are considering an alternative proposal not to list paint manufacturing waste liquids. If we do not like K180, then there would be no need to add styrene to the F039 or UTS standards.

wastes that do not require alternative or additional treatment (i.e., those that currently are treated to meet the LDR treatment standards) are excluded from the required capacity estimates. Land-disposed wastes requiring alternative or additional treatment or recovery capacity that is available on-site or within the same company also are excluded from EPA's estimates of needed commercial capacity. EPA then compares the resulting estimates of required commercial capacity to estimates of available commercial capacity. If adequate commercial capacity exists, the waste is restricted from further land disposal. If protective alternative capacity does not exist, EPA has the authority to grant a national capacity variance.

In making the estimates described above, the volume of waste requiring treatment depends on the current waste management practices employed by the waste generators before this proposed regulation is promulgated and becomes effective. Data on waste management practices for these wastes were collected during the development of this proposed rule. However, we realize that as the regulatory process proceeds, generators of these wastes may decide to minimize or recycle their wastes or otherwise alter their management practices. Thus, we will monitor changes and update data on current management practices as these changes will affect the volume of wastes ultimately requiring commercial treatment or recovery capacity.

The commercial hazardous waste treatment industry may change rapidly. For example, national commercial treatment capacity changes as new facilities come on line or old facilities go off line, and as new units and new technologies are added at existing facilities. The available capacity at commercial facilities also changes as facilities change their commercial status (e.g., changing from a fully commercial to a limited commercial or ''captive''—company owned—facility). Thus, we also continue to update and monitor changes in available commercial treatment capacity.

For wastes required to meet today's proposed treatment standards, we request data on the annual generation volumes and characteristics of wastes affected by this proposed rule, including proposed hazardous wastes K179 and K180 in wastewater and nonwastewater forms. We also request data on soil or debris contaminated with these wastes, residuals generated from the treatment or recycling of these wastes, and the current and planned management practices for the wastes, waste mixtures, and treatment residuals.

For available capacity to meet the LDR requirements, we request data on the current treatment or recovery capacity capable of treating these wastes, facility and unit permit status related to treatment of the proposed wastes, and any plans that facilities may expand or reduce existing capacity or construct new capacity. In addition, we request information on the time and necessary procedures required for permit modification for generators or commercial treatment or disposal facilities to manage the wastes, required changes for operating practices due to the proposed listings or proposed additional constituents to be regulated in the wastes, and any waste minimization activities associated with the wastes. Of particular interest to us are chemical and physical constraints of treatment technologies for these wastes and any problems for disposing of these wastes. Also of interest are any analytical difficulties associated with identifying and monitoring the regulated constituents in these wastes.

2. What Are The Capacity Analysis Results?

This preamble only provides a summary of the capacity analysis performed to support this proposed regulation. For additional and more detailed information, please refer to the ''Background Document for Capacity Analysis for Land Disposal Restrictions: Newly Identified Paint Production Wastes (Proposed Rule), January 2001'' (i.e., the Capacity Background Document).

For this capacity analysis, we examined data on waste characteristics (such as whether the waste is a solid, solvent, or an aqueous waste) and management practices gathered for the paint manufacturing hazardous waste listing determination. We also examined data on available treatment or recovery capacity for these wastes. The sources for these data are the 2000 RCRA section 3007 survey and site visits (see the docket for this proposed regulation for more information on these survey instruments and facility activities), the available treatment capacity data submission that was collected in the 1990's, and the 1997 Biennial Report (BR).

We derived our estimated quantities requiring alternative or additional treatment to meet the LDR treatment standards from the estimated population for paint manufacturers (i.e., approximately one thousand paint manufacturing facilities in the United States, as discussed earlier for RCRA Section 3007 Survey (Section II.G)). K179 is paint manufacturing waste solid, so it is generated as a nonwastewater, as defined in 40 CFR 268.2(d) and (f) (i.e., nonwastewaters are wastes that do not meet the criteria for wastewaters which contain less than 1% by weight total organic carbon (TOC) and less than 1% by weight total suspended solids (TSS)). K180 is a paint manufacturing waste liquid and could be a nonwastewater or wastewater form based on the above definition.

Generally, facilities may combine a variety of wastes (for example, sludges from tank cleaning operations and wastewater treatment) and send their wastes off to one waste management unit. Some waste types are managed separately (for example, wastes with some value for fuel blending). We used weighted and extrapolated universe waste quantities from approximately one thousand paint manufacturing facilities for our capacity analysis. After examining waste generation quantities and their management practices, we estimated that approximately 17,000 tons per year of K179 and K180 wastes may require alternative or additional treatment to meet the LDR standards. This amount of waste covers the quantities which are currently land disposed, managed in a Subtitle D combustion unit, or uncertain on their management practices.

The quantities requiring alternative or additional treatment could be smaller because much of the proposed and newly identified paint manufacturing (or production) waste is mixed with existing listed and/or characteristic wastes which already had to meet the LDR requirements for at least some of the proposed constituents for K179 and K180 wastes. Also, most of the surveyed facilities that reported generation of waste residuals of concern under this listing determination reported that they recycled or reused the residuals to some extent. Furthermore, waste generated from the production batches are also generated in batches rather than in a continuous stream. We recognize the volume and type of paint produced, degree of automation, amount of non land-based recycling, age of facility, and the speed at which facilities may change product formulations can affect types and amount of waste generated. Therefore, the actual annual quantity of waste requiring commercial treatment may fluctuate due to these variations. However, we find that there is no shortfall for available commercial treatment capacity for these wastes proposed in today's rule. For a more detailed analysis regarding the amount of paint manufacturing (or production)

wastes requiring treatment to meet the LDR standards, see the Capacity Background Document in the public docket for this proposed rule.

As discussed in the section for the LDR treatment standards, we are proposing that numerical or technology-specific treatment standards be applied to K179 and K180 wastes, depending on the constituent in the wastes. For nonwastewater forms of these wastes, we anticipate that commercially available incineration, followed by stabilization if necessary (for antimony), can be used to meet these numerical treatment standards. For one organic constituent (formaldehyde) in wastewater and nonwastewater forms of K180, we are proposing to require treatment by specified methods. For formaldehyde in K180 wastewater we are proposing the following technologies as methods of treatment, wet air oxidation (WETOX) or chemical or electrolytic oxidation (CHOXD) followed by carbon adsorption (CARBN); or combustion (CMBST). For this constituent in the nonwastewater form of K180, the required technology standard proposed is combustion. We assume that facilities would achieve waste treatment standards using combustion, stabilization, or both for K179 and K180 wastes. The quantity of commercially available combustion capacity for sludge, solid, and liquids is well over one million tons per year based on 1997 Biennial Report data. The quantity of commercially available stabilization capacity is at least seven million tons per year based on 1995 Biennial Report data. Also, based on the data submittals in the early 1990's and 1997 BR data, we estimated that at least 34 million tons per year of commercial wastewater treatment capacity are available. Please note that facilities could use any available technologies (except impermissible dilution) to achieve the LDR numerical standards for these wastes.

Based on the results of the RCRA section 3007 survey and the site visits, we did not identify any paint manufacturing facilities that manage these proposed wastes in on-site surface impoundments. From the available information, we found that at least one wastewater treatment plant accepted proposed paint manufacturing waste liquids (K180) from the paint production industry, and the facility managed these wastes in a lined surface impoundment. Assuming such an impoundment satisfies requirements of section 3005(j)(11) (in essence, meets minimum technological requirements and is dredged annually), such wastes would not require treatment. If any wastes are managed in an impoundment not satisfying requirements of 3005(j)(11) (e.g., an unlined surface impoundment) of a wastewater treatment system, the wastes would be subject to land disposal prohibitions. However, we anticipate that very few facilities, if any, would manage the newly identified paint manufacturing wastes in such impoundments.

Based on the foregoing, we expect that sufficient capacity exists to treat the proposed K179 and K180 wastes that would require alternative or additional treatment. Therefore, we are proposing to not grant a national capacity variance for these wastes.

Further, soil and debris contaminated with these newly identified wastes may be subject to the LDRs (see LDR Treatment Standards for Soil in LDR Phase IV Final Rule, 63 FR 28602, May 26, 1998; 40 CFR 268.45 Treatment Standards for Hazardous Debris), but we believe that the contaminated soil and debris, if any, would not require substantial commercial treatment capacity. There are no data showing such contaminated soil and debris are currently generated. We expect that the majority of contaminated soil and debris, if generated, will be managed on-site. Therefore, we are not proposing to grant a national capacity variance for hazardous soil and debris contaminated with these wastes covered under this proposal.

Based on the RCRA section 3007 Survey conducted in early 2000 (which collected 1998 data), there are no data showing that the newly proposed wastes are managed by underground injection wells. Also, based on the 2000 RCRA section 3007 Survey, there are no data showing mixed radioactive wastes associated with the proposed listings. We are proposing to not grant a national capacity variance for underground injected wastes, mixed radioactive wastes (i.e., radioactive wastes mixed with K179 and K180), or soil and debris contaminated with these mixed radioactive wastes, if such wastes are generated.

Therefore, we propose that LDR treatment standards thus become effective when the listing determinations become effective for the wastes covered under today's rule. This conforms to RCRA section 3004(h)(1), which indicates that land disposal prohibitions must take effect immediately when there is sufficient treatment or disposal capacity available for the wastes. However, we may need to revise capacity analyses or capacity variance decisions if final listing determinations are changed or if we receive data and information to warrant any revision.

We request comments on the estimated quantities requiring alternative treatment and information on characteristics of the affected wastes, management practices for these wastes, and available treatment, recovery or disposal capacity for the wastes. We also request comments on whether any facility uses surface impoundment or underground injection to manage these wastes. In addition, we solicit comments on our decision not to grant a national capacity variance for any of the affected wastes. We will consider all available data and information provided during the public comment period and revise our capacity analysis accordingly in making the final capacity determinations. Please note that the ultimate volumes of wastes estimated to require alternative or additional commercial treatment may change if the final listing determinations change. Should this occur, we will revise the capacity analysis accordingly.

3. What Is the Available Treatment Capacity for Other Wastes Subject to Revised UTS and F039 Standards?

With respect to the revisions to the F039 and UTS lists, as discussed earlier in the section on K179 and K180 treatment standards, we are proposing to add acrylamide and styrene to the list of regulated constituents in F039 (40 CFR section 268.40). We are also proposing to add styrene to the UTS table (40 CFR section 268.48). Acrylamide is currently listed in the Appendix VIII of part 261. EPA is proposing to add styrene in the Appendix VIII as discussed in the earlier section (Section II). We have estimated what portion of the F039 or characteristic wastes (which require treatment of underlying hazardous constituents to UTS levels) may be required to meet these new treatment standards. We request comments on the estimates, the appropriate means of treatment (if necessary), and the sufficiency of available treatment capacity for the affected wastes by the addition of these constituents to the F039 and UTS lists.

When changing the treatment requirements for wastes already subject to LDR (including F039 under 40 CFR 261.31 and characteristic wastes under 40 CFR 261.24) for which the potential capacity variance periods have expired, EPA no longer has authority to use RCRA section 3004(h)(2) to grant a capacity variance to these wastes. However, EPA is guided by the overall objective of section 3004(h), namely that treatment standards which best

accomplish the goal of RCRA section 3004(m) (to minimize threats posed by land disposal) should take effect as soon as possible, consistent with availability of treatment capacity.

We expect that only a limited quantity of hazardous waste leachate, if any, may be generated from the disposal of newly-proposed K179 and K180 wastes and added to the generation of leachates from other multiple restricted hazardous wastes already subject to LDR.

For the amount of characteristic wastes or leachates generated from those previously regulated hazardous wastes that would be subject only to the new treatment standards for these constituents, we evaluated the universe of wastes that might be impacted by revisions to the lists of regulated constituents for F039 and UTS based on limited information. Based on 1997 Biennial Report data and some assumptions of waste compositions and their potential for land disposal, we were able to estimate the potential need for additional treatment. For example, we estimated an upper bound of 7,000 tons per year of nonwastewaters mixed with other waste codes, the F039 leachate from which would be potentially impacted by the revision to the F039 treatment standards. In a similar fashion, we estimated that approximately 250,000 tons per year of characteristic nonwastewaters potentially might be affected by the proposed changes.

These upper bound estimates are most likely significantly overstated since only a portion of each estimated waste volume may contain the proposed additional constituents at concentrations above the proposed level specified in the UTS table and the F039 list. The estimates assume that these constituents are present at levels above the proposed treatment standards in all of these F039 and characteristically hazardous wastes and require alternative treatment, when it is likely that this may be true in only a small subset of the cases (as described in the Capacity Background Document). Furthermore, EPA does not anticipate that waste volumes subject to treatment for F039 or characteristic wastes would significantly increase because waste generators already are required to comply with the treatment requirements for other already regulated organic or metal constituents that may be present in the wastes. The volumes of wastes for which additional treatment is needed solely due to the addition of these constituents to the F039 and UTS lists are therefore expected to be small. See the Capacity Background Document for detailed analysis.

Even if we have underestimated the projected volume of wastes requiring treatment, we believe that there still would be no shortage of treatment capacity. Based on data submittals in the early 1990's and 1997 BRS data, EPA has estimated that at least 34 million tons per year of commercial wastewater treatment capacity are available, and approximately 1.6 million tons per year of liquid, sludge, and solid commercial combustion capacity are available. Also, as discussed earlier in this section, there are seven million tons of available stabilization capacity. These are well above the quantities of F039 or characteristic wastes potentially requiring treatment for the proposed additional constituents even under the conservative screening assumptions described above. Therefore, we are proposing a decision not to delay the effective date for adding these constituents to the lists of constituents for F039 and UTS.

We request comments on our proposed decision to not delay the effective date for adding these constituents to the lists of constituents for F039 and UTS. We request data on the annual generation volumes and characteristics of wastes affected by the proposed changes to UTS and F039 in wastewater and nonwastewater forms (if any), and the current and planned management practices for the wastes, waste mixtures, and treatment residuals. We also request data on the current treatment or recovery capacity available for treating the affected wastes.

VII. State Authority and Compliance

A. How Are States Authorized Under RCRA?

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA hazardous waste program within the State. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified time-frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA (including the hazardous waste listings finalized in this notice) take effect in authorized States at the same time that they take effect in non-authorized States. While States must still adopt HSWA-related provisions as State law to retain final authorization, EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so.

Authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. See also 40 CFR 271.1(I). For those Federal program changes, both HSWA and non-HSWA, that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. Less stringent regulations, both HSWA and non-HSWA, do not go into effect in authorized States until those States adopt them and are authorized to implement them.

B. How Would This Rule Affect State Authorization?

We are proposing today's rule pursuant to HSWA authority. The listing of the new K-wastes is promulgated pursuant to RCRA section 3001(e)(2), a HSWA provision. Therefore, we are adding this rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and take effect in all States, regardless of their authorization status. The land disposal restrictions for these wastes are promulgated pursuant to RCRA section 3004(g) and (m), also HSWA provisions. Table 2 in 40 CFR 271.1(j) is modified to indicate that these requirements are self-implementing. States may apply for either interim or final authorization for the HSWA provisions in 40 CFR 271.1(j), as discussed below. Until the States receive authorization for these more stringent HSWA provisions, EPA would implement them.

A State submitting a program modification for the portions of this proposed rule promulgated pursuant to

HSWA authority could apply to receive either interim authorization under RCRA section 3006(g) or final authorization under 3006(b), if the State requirements are, respectively, substantially equivalent or equivalent to EPA's requirements. States can only receive final authorization for program modifications implementing non-HSWA requirements. The procedures and schedule for final authorization of State program modifications are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations are currently scheduled to expire on January 1, 2003 (see 57 FR 60129, February 18, 1992).

Section 271.21(e)(2) of EPA's State authorization regulations (40 CFR part 271) requires that States with final authorization modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States would need to modify their programs to adopt this proposed regulation is determined by the date of promulgation of a final rule in accordance with section 271.21(e)(2). Table 1 at 40 CFR 271.1 is amended accordingly. Once EPA approves the modification, the State requirements would become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to those in this proposed rule. These State regulations have not been assessed against the Federal regulations being finalized to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are more stringent than or broader in scope than current Federal regulations may continue to administer and enforce their regulations as a matter of State law. In implementing the HSWA requirements, EPA will work with the States under agreements to avoid duplication of effort.

C. Who Would Need to Notify EPA That They Have a Hazardous Waste?

Under RCRA Section 3010, the Administrator may require all persons who handle hazardous wastes to notify EPA of their hazardous waste management activities within 90 days after the wastes are identified or listed as hazardous. This requirement may be applied even to those generators, transporters, and treatment, storage, and disposal facilities (TSDFs) that have previously notified EPA with respect to the management of other hazardous wastes. The Agency is proposing to waive this notification requirement for persons who handle wastes that are covered by today's listings and have already (1) notified EPA that they manage other hazardous wastes, and (2) received an EPA identification number. However, any person who generates, transports, treats, stores, or disposes of these wastes and has not previously received an EPA identification number would need to obtain an identification number pursuant to 40 CFR 262.12 to generate, transport, treat, store, or dispose of these hazardous wastes 90 days after the effective date.

D. What Would Generators and Transporters Have to Do?

Once a final rule is promulgated, persons that generate newly identified hazardous wastes may be required to obtain an EPA identification number if they do not already have one (as discussed above). In order to be able to generate or transport these wastes after the effective date of this rule, generators of the wastes listed today would be subject to the generator requirements set forth in 40 CFR part 262. These requirements include standards for hazardous waste determination (40 CFR 262.11), compliance with the manifest (40 CFR 262.20 to 262.23), pretransport procedures (40 CFR 262.30 to 262.34), generator accumulation (40 CFR 262.34), record keeping and reporting (40 CFR 262.40 to 262.44), and import/export procedures (40 CFR 262.50 to 262.60). The generator accumulation provisions of 40 CFR 262.34 allow generators to accumulate hazardous wastes without obtaining interim status or a permit only in units that are container storage units or tank systems. These existing regulations also place a limit on the maximum amount of time that wastes can be accumulated in these units. If, however, the wastes covered in today's proposed rule are managed in units that are not tank systems or containers, then these units would be subject to the permitting requirements of 40 CFR parts 264 and 265, and the generator is required to obtain interim status and seek a permit (or modify interim status or a permit, as appropriate). Also, current regulations require that persons who transport newly identified hazardous wastes to obtain an EPA identification number as described above; such transporters will be subject to the transporter requirements set forth in 40 CFR part 263.

E. Which Facilities Would Be Subject to Permitting?

1. Facilities Newly Subject to RCRA Permit Requirements

Facilities that treat, store, or dispose of wastes that are subject to RCRA regulation for the first time by this proposed rule (that is, facilities that have not previously received a permit pursuant to Section 3005 of RCRA and are not currently operating pursuant to interim status), could be eligible for interim status (see section 3005(e)(1)(A)(ii) of RCRA). To obtain interim status based on treatment, storage, or disposal of such newly identified wastes, eligible facilities would be required to comply with 40 CFR 270.70(a) and 270.10(e) by providing notice under section 3010 and submitting a Part A permit application no later than 6 months after date of publication of the final rule. Such facilities would be subject to regulation under 40 CFR part 265 until a permit is issued.

In addition, under Section 3005(e)(3) and 40 CFR 270.73(d), not later than 6 months after date of publication of the final rule, land disposal facilities newly qualifying for interim status under section 3005(e)(1)(A)(ii) would also need to submit a Part B permit application and certify that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements. If the facility fails to submit these certifications and a permit application, then interim status would terminate on that date.

2. Existing Interim Status Facilities

Pursuant to 40 CFR 270.72(a)(1), all existing hazardous waste management facilities (as defined in 40 CFR 270.2) that treat, store, or dispose of the newly identified hazardous wastes and are currently operating pursuant to interim status under section 3005(e) of RCRA, would need to file an amended Part A permit application with EPA no later than six months after date of publication of a final rule. By doing this, the facility could continue managing the newly listed wastes. If the facility fails to file an amended Part A application by that date, the facility would not receive interim status for management of the newly listed hazardous wastes and may not manage those wastes until the facility receives either a permit or a change in interim status allowing such activity (40 CFR 270.10(g)).

3. Permitted Facilities

Facilities that already have RCRA permits would need to request permit

modifications if they want to continue managing newly listed wastes (see 40 CFR 270.42(g)). This provision states that a permittee may continue managing the newly listed wastes by following certain requirements, including submitting a Class 1 permit modification request by the date on which the waste or unit becomes subject to the new regulatory requirements (i.e., the effective date of a final rule), complying with the applicable standards of 40 CFR parts 265 and 266 and submitting a Class 2 or 3 permit modification request within 180 days of the effective date.

Generally, a Class 2 modification is appropriate if the newly listed wastes will be managed in existing permitted units or in newly regulated tank or container units and will not require additional or different management practices than those authorized in the permit. Please note that under this proposal, liquids managed in tanks or containers would only become newly listed waste if they meet the listing description for constituent concentration levels and if they are not managed solely in tanks and containers and then discharged directly from a POTW or centralized wastewater treatment facility. A Class 2 modification requires the facility owner to provide public notice of the modification request, a 60-day public comment period, and an informal meeting between the owner and the public within the 60-day period. The Class 2 process includes a ''default provision,'' which provides that if the Agency does not reach a decision within 120 days, the modification is automatically authorized for 180 days. If the Agency does not reach a decision by the end of that period, the modification is permanently authorized (see 40 CFR 270.42(b)).

A Class 3 modification is generally appropriate if management of the newly listed wastes requires additional or different management practices than those authorized in the permit or if newly regulated land-based units are involved. The initial public notification and public meeting requirements are the same as for Class 2 modifications. However, after the end of the 60-day public comment period, the Agency will grant or deny the permit modification request according to the more extensive procedures of 40 CFR part 124. There is no default provision for Class 3 modifications (see 40 CFR 270.42(c)).

Under 40 CFR 270.42(g)(1)(v), for newly regulated land disposal units, permitted facilities must certify that the facility is in compliance with all applicable 40 CFR Part 265 groundwater monitoring and financial responsibility requirements no later than 6 months after the date of publication of a final rule. If the facility fails to submit these certifications, authority to manage the newly listed wastes under 40 CFR 270.42(g) will terminate on that date.

For states which have not yet picked up the permit modification tables of 40 CFR 270.42, ''major'' and ''minor'' permit modifications should be applied as appropriate to the permit modification request.

4. Units

Units in which newly identified hazardous wastes are generated or managed would be subject to all applicable requirements of 40 CFR part 264 for permitted facilities or 40 CFR part 265 for interim status facilities, unless the unit is excluded from such permitting by other provisions, such as the wastewater treatment tank exclusions (40 CFR 264.1(g)(6) and 265.1(c)(10)) and the product storage tank exclusion (40 CFR 261.4(c)). Examples of units to which these exclusions could never apply include landfills, waste piles, incinerators, and any other miscellaneous units in which these wastes may be generated or managed.

5. Closure

All units in which newly identified hazardous wastes are treated, stored, or disposed after the effective date of this regulation that are not excluded from the requirements of 40 CFR parts 264 and 265 would be subject to both the general closure and post-closure requirements of subpart G of 40 CFR parts 264 and 265 and the unit-specific closure requirements set forth in the applicable unit technical standards subpart of 40 CFR part 264 or 265 (e.g., Subpart N for landfill units). In addition, EPA promulgated a final rule that allows, under limited circumstances, regulated landfills or surface impoundments to cease managing hazardous waste, but to delay Subtitle C closure to allow the unit to continue to manage nonhazardous waste for a period of time prior to closure of the unit (see 54 FR 33376, August 14, 1989). Units for which closure is delayed continue to be subject to all applicable 40 CFR parts 264 and 265 requirements. Dates and procedures for submittal of necessary demonstrations, permit applications, and revised applications are detailed in 40 CFR 264.113(c) through (e) and 265.113(c) through (e).

VIII. CERCLA Designation and Reportable Quantities

A. What Is the Relationship Between RCRA and CERCLA?

CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act of 1980) defines the term ''hazardous substance'' to include RCRA listed and characteristic hazardous wastes. When EPA adds a hazardous waste under RCRA, the Agency also will add the waste to its list of CERCLA hazardous substances. EPA establishes a reportable quantity, or RQ, for each CERCLA hazardous substance. EPA provides a list of the CERCLA hazardous substances along with their RQs in Table 302.4 at 40 CFR 302.4. If you are the person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount that equals or exceeds its RQ, then you must report that release to the National Response Center (NRC) pursuant to CERCLA Section 103. You also may have to notify State and local authorities.

B. How Does EPA Determine Reportable Quantities?

Under CERCLA, all new hazardous substances automatically have a statutory one-pound RQ. EPA adjusts the RQ of a newly added hazardous substance based on an evaluation of its intrinsic physical, chemical, and toxic properties. These intrinsic properties—called ''primary criteria''—are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. EPA evaluates the data for a hazardous substance for each primary criterion. To adjust the RQs, EPA ranks each criterion on a scale that corresponds to an RQ value of 1, 10, 100, 1,000, or 5,000 pounds. For each criterion, EPA establishes a tentative RQ. A hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the ''primary criteria RQ'' for that substance.

After the primary criteria RQs are assigned, EPA further evaluates substances for their susceptibility to certain degradative processes. These are secondary adjustment criteria. The natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades rapidly to a less hazardous form by one or more of the BHP processes, EPA generally raises its RQ (as determined by the primary RQ

adjustment criteria) by one level. Conversely, if a hazardous substance degrades to a more hazardous product after its release, EPA assigns an RQ to the original substance equal to the RQ for the more hazardous substance.

The standard methodology used to adjust the RQs for RCRA hazardous waste streams differs from the methodology applied to individual hazardous substances. The procedure for assigning RQs to RCRA waste streams is based on the results of an analysis of the hazardous constituents of the waste streams. The constituents of each RCRA hazardous waste stream are identified in 40 CFR part 261, Appendix VII. EPA first determines an RQ for each hazardous constituent within the waste stream using the methodology described above. The lowest RQ value of these constituents becomes the adjusted RQ for the waste stream. When there are hazardous constituents of a RCRA waste stream that are not CERCLA hazardous substances, the Agency develops an RQ, called a ''reference RQ,'' for these constituents in order to assign an appropriate RQ to the waste stream (see 48 FR 23565, May 25, 1983). In other words, the Agency derives the RQ for waste streams based on the lowest RQ of all of the hazardous constituents, regardless of whether they are CERCLA hazardous substances.

C. Is EPA Proposing to Adjust the Statutory One Pound RQ for These Wastes?

In today's proposed rule, EPA is proposing to assign 100-pound adjusted RQs to the K179 and K180 wastes. The RQs for each of the constituents contained in the two proposed wastes are presented in the table below.[46]

TABLE VIII.C–1.—PROPOSED RQS FOR CONSTITUENTS IDENTIFIED IN K179 AND K180 WASTES

Constituents in K179 & K180 waste streams	Constituent RQ (lbs.) (40 CFR 302.4)
Acrylonitrile	100
Acrylamide	5000
Antimony	5000
N-butyl alcohol	5000
Methylene chloride (dichloromethane)	1000
Formaldehyde	100
Ethylbenzene	1000
Methyl isobutyl ketone	5000
Methyl methacrylate	1000
Styrene	1000
Toluene	1000
Xylene	1000

[46] We are considering an alternative proposal not to list paint manufacturing waste liquids (see Section IV.D). If we do not list wastes under K180, then there would be no need to promulgate adjusted RQs for the following constituents: n-butyl alcohol, methylene chloride, formaldehyde, ethylbenzene, styrene, toluene, and xylene.

D. How Would a Concentration-Based Hazardous Waste Listing Approach Relate to My Reporting Obligations Under CERCLA? When Would I Need To Report a Release of These Wastes Under CERCLA?

Today's proposed hazardous waste listings are based on the concentrations of the hazardous constituents in the wastes. Adjusted RQs of 100 pounds are being proposed for these wastes based on the lowest RQ of the hazardous constituents in the wastes. Notification is required under CERCLA when wastes meeting the listing descriptions are released into the environment in a quantity that equals or exceeds the RQ for the waste.

For CERCLA reporting purposes, the Clean Water Act mixture rule (40 CFR 302.6) applies to releases of these wastes when the quantity (or concentrations) of all of the hazardous constituents in the waste are known. In such a case, notification is required where an amount of waste is released that contains an RQ or more of any hazardous substance contained in the waste. When the quantity (or concentration) of one or more of the hazardous constituents is not known, notification is required when the quantity of waste released equals or exceeds the RQ for the waste stream.

Although today's proposed hazardous waste listings are based on the concentrations of the hazardous constituents in the wastes, the Agency recognizes that it may not be necessary for a generator of these wastes to learn the concentrations of every hazardous constituent in the wastes in order to determine whether one of the listing descriptions applies. This is because a waste stream need exceed only one of the constituent-specific regulatory levels to meet one of the listing descriptions. Moreover, many generators, after testing their waste streams initially, may use knowledge of the waste, or of the process generating the waste, to determine that their waste is or is not hazardous under 40 CFR 262.11. Today's proposed rule requires sampling and analysis only for large-volume generators of the proposed waste streams. Therefore, many smaller generators may not know the concentrations of the constituents in their wastes. For these reasons, EPA believes that many, if not a majority, of the generators of these wastes may not know the concentrations of every constituent in these wastes, and may not, therefore, be able to apply the mixture rule.

E. How Would I Report a Release?

To report a release of proposed K179 or K180 (or any other CERCLA hazardous substance) that equals or exceeds its RQ, you would need to immediately notify the National Response Center (NRC) as soon as you have knowledge of that release. The toll-free telephone number of the NRC is 1–800–424–8802; in the Washington, DC, metropolitan area, the number is (202) 267–2675.

You could also need to notify State and local authorities. The Emergency Planning and Community Right-to-Know Act (EPCRA) requires that owners and operators of certain facilities report releases of CERCLA hazardous substances and EPCRA extremely hazardous substances (see list in 40 CFR part 355, appendix A) to State and local authorities. After the release of an RQ or more of any of those substances, you must report immediately to the community emergency coordinator of the local emergency planning committee for any area likely to be affected by the release, and to the State emergency response commission of any State likely to be affected by the release.

F. What Is the Statutory Authority for This Program?

Section 101(14) of CERCLA defines the term hazardous substance by referring to substances listed under several other environmental statutes, as well as those substances that EPA designates as hazardous under CERCLA section 102(a). In particular, CERCLA section 101(14)(C) defines the term hazardous substance to include ''any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act.'' CERCLA section 102(a) gives EPA authority to establish RQs for CERCLA hazardous substances. CERCLA section 103(a) requires any person in charge of a vessel or facility that releases a CERCLA hazardous substance in an amount equal to or greater than its RQ to report the release immediately to the federal government. EPCRA section 304 requires owners or operators of certain facilities to report

releases of CERCLA hazardous substances and EPCRA extremely hazardous substances to State and local authorities.

G. How Can I Influence EPA's Thinking on Regulating K179 and K180 Under CERCLA?

In developing this proposal, EPA tried to address the concerns of all our stakeholders. Your comments will help us to improve this proposal. We invite you to provide your views on this proposal and how it may affect you. We also are interested in receiving any comments that you have on the information provided in Table VIII.C–1, including the hazardous constituents identified for proposed K179 and K180 and the maximum observed concentrations for each constituent.

IX. Analytical And Regulatory Requirements

A. Is This a Significant Regulatory Action Under Executive Order 12866?

Under Executive Order 12866, EPA must determine whether a regulatory action is significant and, therefore, subject to comprehensive review by the Office of Management and Budget (OMB), and the other provisions of the Executive Order. A significant regulatory action is defined by the Order as one 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 rights and obligations or recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

OMB has determined that today's proposed rule is a ''significant regulatory action,'' because it may raise novel legal or policy issues. 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.

Based on the results of our economic analysis of the proposed rule, we believe that the annual economic effects of this proposed rule do not meet the requirements for an economically significant regulatory action (see point one above). On the national level, the annual compliance costs of this rule, as proposed, are estimated to be less than $100 million. We are unable to quantify the benefits of the proposed rule, but anticipate that such benefits would also be less than $100 million. Furthermore, we do not expect this proposed rule to 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.

We have prepared two economic support documents for this proposed action. These are: Economic Assessment for the Proposed Concentration-Based Listing of Wastewaters and Non-Wastewaters from the Production of Paints and Coatings, and, Regulatory Flexibility Screening Analysis for the Proposed Concentration-Based Listing of Wastewaters and Non-Wastewaters from the Production of Paints and Coatings. The Economic Assessment addresses, among other elements, compliance costs to the regulated community, industry economic impacts, qualitative benefits, children's health, unfunded mandates, regulatory takings, federalism, and environmental justice. The Regulatory Flexibility Screening Analysis (RFSA) examines impacts to small entities that may result from this action, as proposed. These analyses cover not only the impacts on the paint industry, but also the potential impacts on land disposal facilities that have disposed of the wastes considered in this rulemaking. Because of the proposed listing, leachate from these landfills may be hazardous under the Derived-from Rule. Also, when the leachate from these two wastes mixes with leachate from other wastes disposed in these landfills the entire leachate quantity may be considered hazardous under the Mixture Rule. A summary of findings from this Economic Assessment is presented directly below. The RFSA is summarized in Part B of this Section. The complete Economic Assessment and RFSA documents are available in the RCRA docket established for this action.

Paint manufacturers produce varnishes, lacquers, enamels and shellac, putties, wood fillers and sealers, paint and varnish removers, paint and brush cleaners, and allied products. The products are produced for four end-use markets: architectural coatings, product finishes for original equipment manufacturers, special purpose coatings, and allied paint products. According to Census data for 1997 there are approximately 1,495 facilities in operation in the U.S., owned by 1,206 different companies. Total production is estimated to range from 1.2 billion and 1.5 billion gallons per year between 1992 and 1998, with a total product value of $17.2 billion in 1998. This industry segmentation includes all facilities identified in Standard Identification Classification (SIC) 2851 and under the North American Industrial Classification (NAICS) code 325510; this includes some manufacturers of miscellaneous allied paint products which will not be impacted by the proposed rule.

Approximately 1,146, or 95 percent of the paint manufacturing companies in the U.S. are estimated to be small according to the Small Business Administration (SBA) definition for small (fewer than 500 employees) based on corporate level data.[47] Many of these facilities (and companies) are very small, with fewer than ten full-time employees.

While the Census of Manufacturers identifies 1,495 facilities, not all of these facilities are actually paint manufacturers potentially affected by the proposed waste listing. The Agency has estimated, using a RCRA 3007 survey of the industry, that there are 972 facilities that manufacture paints and coatings in the U.S. Of this total, we estimate that 615 facilities operated by 494 companies generate the waste streams of concern for this proposed listing. On the basis of the extrapolated survey, we estimate that these facilities generate nearly 107,000 metric tons of the targeted waste streams (K179 and K180), of which about 36 percent is currently managed as hazardous waste. This analysis relies primarily on data generated through the Agency's survey of the industry, augmenting this information with Census and other industry specific information as appropriate.

We have developed impact estimates for the concentration-based listing proposal (the Agency's preferred approach) and two key options: A no-list or status quo option and a traditional or standard listing approach option. Under the proposed approach, we also evaluated two alternative scenarios: A nonwastewaters option which limits the listing to waste solids (K179) and a sensitivity analysis scenario where wastes currently going to hazardous fuel blending and cement kilns would be diverted to a commercial hazardous waste incinerator.

[47] Small Business Size Standards—Matched to North American Industrial Classification System (NAICS) Codes, Effective October 1, 2000, Small Business Administration (SBA)

A supplementary analysis of our RCRA 3007 survey data shows that an estimated 50 percent of the nonwastewaters and 20 percent of the wastewaters generated by survey respondents did not contain any of the constituents of concern. We used these ratios for our analysis of the percentage of wastes that would be listed hazardous waste for the concentration-based listing approach (the Agency's proposed option), e.g., 50 percent of nonwastewaters and 80 percent of wastewaters would become hazardous. Our findings under this approach may overestimate compliance costs for waste streams containing listed constituents that fall below risk-based concentration levels. We assumed that one-hundred percent of all targeted wastes were designated as hazardous under the aggregate findings for the traditional or standard listing option.

The estimated impacts associated with the Agency proposed approach, alternative scenarios to the proposed approach, and alternative waste listing options are presented in the table below. As indicated, we estimate that the nonwastewaters scenario under the proposed approach is the least costly, at $6.7 million per year for all impacted facilities. Our proposed approach has estimated annual costs of $7.3 million per year, or $600,000 more than the nonwastewaters scenario. If we assume that the wastes currently going to hazardous waste fuel blending will be diverted to commercial incinerators (the sensitivity analysis) we estimate aggregate cost of $18.1 million per year. The traditional or standard listing option is estimated to cost $10.9 million per year. The no-list or status quo option would result in no incremental costs to industry. The impact estimates in Table IX.A–1 are fully weighted to account for model facility representation. These figures (except the Traditional Option) also assume baseline conditions where 50 percent of the nonwastewaters and 20 percent of the wastewaters are nonhazardous, as managed under the proposed waste listing option.

TABLE IX.A–1.—SUMMARY OF ESTIMATED IMPACTS FROM ALL WASTE LISTING OPTIONS AND SCENARIOS

Listing option/scenario	Average weighted incremental annual cost as a percent of gross annual sales	Aggregate annual compliance cost impacts (million 1999 dollars)
Proposed Concentration-Based Listing—Agency Preferred Approach (APA)	0.07	[1] 7.3
Agency Preferred Approach-Sensitivity Analysis Scenario (APA 1) (Waste going to all fuel blending is diverted to commercial incineration)	0.19	18.1
Agency Preferred Approach—List Solids (K179) Only (APA 2)	0.06	6.7
Traditional or Standard Listing Option	0.10	[1] 10.9
No List—Status Quo Option	0.0	0.0

[1] While cost estimates under the APA represent only 50 percent of total nonhazardous solids and 80 percent of the nonhazardous liquids, aggregate impacts do not directly reflect this difference. The unweighted and unscaled waste management costs under the APA are estimated at $1.8 million. The unweighted and unscaled waste management costs under the Traditional Listing Option are estimated at $3.5 million. Applying the weighting and scaling factors, plus transportation, administrative, and analytical (APA only) costs results in aggregate annual nationwide compliance costs of $7.3 million for the APA and $10.9 million for the Traditional Option.

In addition to the costs presented above, incremental costs expected to be incurred by the landfill industry are estimated to be approximately $300,000 to $400,000 annually for the proposed option (The Clean Water Act Exemption with Two-Year Impoundment Replacement Deferral regulatory option). However, the costs may be considerably lower as the result of possible savings gained through contract negotiations for repeat customers who provide consistent revenue streams to shipping companies through their regularly scheduled shipments of leachate. It also is likely that not all landfills that received paint wastes prior to this proposed action have leachate collection systems, which would lower the cost estimates. Finally, there is likely some overlap from paint facilities disposing in the same landfill, which will result in lower costs to the landfill industry.

Table IX.A–2 presents impacts for different size classes of the model facilities, based on employment. The impacts presented in this table represent the impacts on the facilities associated with the proposed waste listing approach (APA). However, these figures assume that 100 percent of all of the waste generated is hazardous, as a high-end scenario. In general, cost impacts as a percent of sales are modest, averaging just over 0.1 percent of gross annual revenues. For three of the 151 ''model facilities,'' impacts exceed 1.0 percent of gross sales; these three model facilities are estimated to represent six total facilities. (The reader should note these findings are at the facility, not the company or parent firm level.)

TABLE IX.A–2.—ESTIMATED COST IMPACTS ON MODEL FACILITIES FROM THE AGENCY PREFERRED LISTING APPROACH

Model facility size range (number of employees per facility)	Estimated 1999 average annual gross sales (thousand dollars)	Unweighted incremental cost range per facility* (percent of gross annual sales)	Average unweighted incremental cost as a percent of sales*
1–19	3,661	0.04–3.77	0.11
20–49	11,484	0.01–0.50	0.05
50–149	31,839	0.01–4.06	0.11

TABLE IX.A–2.—ESTIMATED COST IMPACTS ON MODEL FACILITIES FROM THE AGENCY PREFERRED LISTING APPROACH—Continued

Model facility size range (number of employees per facility)	Estimated 1999 average annual gross sales (thousand dollars)	Unweighted incremental cost range per facility* (percent of gross annual sales)	Average unweighted incremental cost as a percent of sales*
150 & Above	85,791	0.01–1.33	0.17

* Estimates derived assuming 100 percent of all waste streams generated by the model facilities are hazardous.

The proposed rule is intended to reduce the potential for environmental releases of hazardous wastes. Depending on current and future exposure patterns, the proposed rule could yield benefits in terms of reductions in health risks due to stricter controls on the management of this waste. The Agency has not monetized or quantitatively estimated the human health or environmental benefits, but anticipates that such benefits would be less than $100 million. Furthermore, additional data are necessary to determine whether there will be net benefits (i.e., benefits exceeding costs) from the proposed rule.

B. What Consideration Was Given to Small Entities Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.?

Introduction

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of rules on small entities, a small entity is defined as: (1) A small business that has fewer than 1000, 750, or 500 employees per firm depending upon the SIC code the firm is primarily classified in; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, we believe that this action should not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the proposed rule on small entities' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

We have completed a screening analysis (Regulatory Flexibility Screening Analysis for the Proposed Concentration-Based Listing of Wastewaters and Non-Wastewaters from the Production of Paints and Coatings), in support of today's proposed action. Findings from this Regulatory Flexibility Screening Analysis (RFSA), as described in the previous section above, suggest that today's rule, as proposed, will not result in significant economic impacts on a substantial number of small business paint manufacturers potentially subject to rule requirements.

Findings

Between 93 percent and 95 percent of all paint and coatings manufacturing companies are estimated to be ''small,'' based on the SBA definition. Census data from 1997 indicate a total of 95 percent are small companies, while our research based on the RCRA 3007 survey data on 1998 practices and research on representative companies indicate approximately 91 percent of all companies may be small. An average of these sources indicates approximately 93 percent, or 460 out of the total of 494 different companies operating 615 facilities potentially subject to rule requirements may be considered small for purposes of this analysis. We have determined that paint manufacturing facilities are not owned or operated by small (or large) entities (not-for-profits, local governments, tribes, etc.), other than businesses.

We estimate that, under the proposed regulatory option, impacts on small companies would average about 0.06 percent of annual gross revenues. Three small companies (operating four facilities) out of the total of 460 small companies potentially subject to rule requirements were found to experience annual compliance cost impacts greater than 1.0 percent of annual gross revenues. We also examined potential economic impacts to small businesses under three alternative regulatory options. Impacts to small businesses under these options all averaged less than 0.5 percent of annual gross revenues.

The Agency is required to make an initial determination if any regulatory action may have a ''significant economic impact on a substantial number of small entities,'' as required by the RFA as amended by SBREFA. However, the legislation presents no explicit guidelines regarding what constitutes a significant impact or what constitutes a significant number of small entities for this particular industry. Based on a review of overall impacts we believe that the impacts on small entities, as estimated in this report, should not be considered ''significant.'' It is also anticipated that the industry will pass at least some of these costs on in the form of higher paint prices, thereby reducing the actual effect on individual small entities.

The paint and coatings industry is dominated by small entities, at least in terms of number of facilities. Accordingly it may be argued that there could be a substantial number of small entities impacted. However it appears that the impacts on these small entities are modest, especially compared with large facilities, as illustrated in Table IX.B–3 below.

TABLE IX.B–3.—SUMMARY OF ESTIMATED IMPACTS FROM ALL WASTE LISTING OPTIONS SMALL AND LARGE FACILITIES *

Listing option	Entity size	Number of unweighted model facilities **	Average incremental cost as a percent of sales	Aggregate annual cost impacts (million 1999$/year)
No List Option	Large	14	0.00	0.0
	Small	137	0.00	0.0
Traditional or Standard Listing	Large	14	0.16	3.6
	Small	137	0.08	7.4
Agency Preferred Approach (APA)	Large	14	0.09	2.1
	Small	137	0.06	5.2
Agency Preferred Approach (Sensitivity Analysis Scenario APA1)	Large	14	0.42	9.4
	Small	137	0.11	8.7
Agency Preferred Approach (Scenario to List Solids Only APA2)	Large	14	0.09	2.0
	Small	137	0.05	4.7

* Large entities include all facilities which could be identified as being owned by companies with more than 500 employees. The small entity category contains all other facilities.
** The estimated total number of small entities affected by the rule industry-wide is 572; there are an estimated 43 large entities affected.

Conclusions

After considering the above findings, I certify that this proposed action should not result in significant economic impacts on a substantial number of small paints and coatings manufacturing businesses subject to rule requirements. Furthermore, this rule, as proposed does not require further analysis and evaluation under a full Regulatory Flexibility Analysis. The RFSA document: Regulatory Flexibility Screening Analysis for the Proposed Concentration-Based Listing of Wastewaters and Non-Wastewaters from the Production of Paints and Coatings, is available for review in the docket established for today's action. Concerned stakeholders are encouraged to conduct a comprehensive review and evaluation of this document and provide non-restricted data and comments designed to improve this analysis.

C. What Consideration Was Given to Children's Health Under 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 proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. Furthermore, the Agency does not have reason to believe that environmental health or safety risks addressed by this action present a disproportionate risk to children.

The topic of environmental threats to children's health is growing in regulatory importance as scientists, policy makers, and village leaders continue to recognize the extent to which children are particularly vulnerable to environmental hazards. Recent EPA actions have been in the forefront of addressing environmental threats to the health and safety of children. Today's proposed rule further reflects our commitment to mitigating environmental threats to all citizens, including children.

A few significant physiological characteristics are largely responsible for children's increased susceptibility to environmental hazards. First, children eat proportionately more food, drink proportionately more fluids, and breathe more air per pound of body weight than do adults. As a result, children potentially experience greater levels of exposure to environmental threats than do adults. Second, because children's bodies are still in the process of development, their immune systems, neurological systems, and other immature organs can be more easily and considerably affected by environmental hazards. The connection between these physical characteristics and children's susceptibility to environmental threats are reflected in the higher baseline risk levels for children.

Today's proposed rule is intended to reduce potential releases of hazardous wastes to the environment. Depending on current and future exposure patterns, any risks associated with such releases would also decrease. EPA considered risks to children in its risk assessment and set allowable concentrations for constituents in the waste at levels that are believed to be protective to children, as well as adults. The management practices proposed in this rule are intended to reduce the potential for unacceptable risks to children potentially exposed to the constituents of concern.

The public is invited to submit or identify peer-reviewed studies and data, of which the agency may not be aware, that assess results of early life exposure to the proposed hazardous constituents from paint manufacturing wastes addressed in this Proposal.

D. What Consideration Was Given to Environmental Justice Under Executive Order 12898?

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population'' (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific

to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17).

We have assessed whether today's proposed rule may help mitigate, or result in disproportionate effects on minority or low-income populations. Due to budgeting and scheduling constraints, we have not compiled data correlating individual paint facility locations with minority/low income populations. However, our risk assessment did not identify risks from management of paint manufacturing waste liquids in tanks onsite at the paint manufacturing facility. Therefore, we believe that any populations in proximity to paint manufacturing facilities are not adversely affected by waste management practices within the purview of this proposal. This proposed listing is intended to reduce unacceptable risks associated with managing paint manufacturing wastes in nonhazardous waste landfills and in surface impoundments. This would reduce risks for any populations living in proximity to such facilities who rely on groundwater for drinking water supplies.

The affected paint manufacturing facilities, however, are distributed throughout the country and many are known to be located within highly urbanized areas. Furthermore, the waste management units in question are estimated, on average, to be located within 50 miles of the manufacturing facilities. Because the proposed rule would provide incentives for reducing the use of hazardous constituents and is intended to reduce environmental risks associated with the management of the targeted waste streams, the Agency believes that this rule could help mitigate health risks to minority and low income communities living near impacted facilities. Furthermore, we have no data indicating that today's proposal would result in disproportionately negative impacts on minority or low income communities.

E. What Consideration Was Given to Unfunded Mandates?

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 their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA must prepare a written analysis, 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 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. 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 to have meaningful and timely input in the development of regulatory proposals, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule does not include a Federal mandate that may result in expenditures of $100 million or more to State, local, or tribal governments in the aggregate, because this rule imposes no enforceable duty on any State, local, or tribal governments. EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. Therefore, today's proposed rule is not subject to the requirements of sections 202, 203, and 205 of UMRA.

F. What Consideration Was Given to Federalism Under Executive Order 13132?

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules will not have substantial direct effects on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice, and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on expressed or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and federally protected interests within the agency's area of regulatory responsibility.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule, as proposed, is projected to result in economic impacts to privately owned paint manufacturing facilities. Marginal administrative burden impacts may occur to selected States an/or EPA Regional Offices if these entities experience increased administrative needs, enforcement requirements, or voluntary information requests. However, this rule, as proposed, will not have substantial direct effects on the States, intergovernmental relationships, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, we specifically solicit comment on this proposed rule from State and local officials.

G. What Consideration Was Given to Tribal Governments Under Executive Order 13175: Consultation and Coordination With Indian Tribal Governments?

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments,'' was signed by the President on November 6, 2000. As of January 6, 2001, Executive Order 13175 (65 FR 67249) took effect and revoked Executive Order 13084. Please note that we addressed tribal considerations under Executive Order 13084 because we developed this proposed rule during the period when this Order was in effect. We will analyze and fully comply with the requirements of Executive Order 13175 before promulgating the final rule.

This Order applies to regulations not specifically required by statute that significantly or uniquely affect the communities of Indian tribal governments, and that impose substantial direct compliance costs on Indian tribal governments. If any rule is projected to result in significant direct costs to Indian tribal communities, EPA cannot issue this rule unless the Federal government provides funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe, or consults with the appropriate tribal government officials early in the process of developing the proposed regulation.

If EPA complies by consulting, we must provide the Office of Management and Budget (OMB) with all required information. We must also summarize, in a separately identified section of the preamble to the proposed or final rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of their concerns, and a statement supporting the need to issue the regulation. Also, Executive Order 13175 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 implements mandates specifically and explicitly set forth by the U.S. Congress. This action is proposed under the authority of sections 3001(b)(1), and 3001(e)(2) of the Hazardous and Solid Waste Amendments (HSWA) of 1984. These sections direct EPA to make a hazardous waste listing determination for ''paint production wastes.'' Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

Furthermore, today's proposal would not significantly or uniquely affect the communities of Indian tribal governments, nor would it impose substantial direct compliance costs on them. Tribal communities are not known to own or operate any paint/coatings manufacturing facilities, nor are these communities disproportionately located adjacent to or near such facilities. Finally, tribal governments will not be required to assume any administrative or permitting responsibilities associated with this proposed rule.

X. Paperwork Reduction Act (PRA), 5 U.S.C. 3501–3520

A. How is the Paperwork Reduction Act Considered in Today's Proposed Rule?

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared (ICR No. 2006.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at *http://www.epa.gov/icr.*

This rule is proposed under the authority of sections 3001(e)(2) and 3001(b)(1) of the Hazardous and Solid Waste Amendments (HSWA) of 1984. The effect of listing the wastes described earlier will be to subject industry to management and treatment standards under the Resource Conservation and Recovery Act (RCRA).

This proposed concentration-based listing is designed to be self-implementing. Under this proposed approach, generators of the K179 and/or K180 wastes must determine if their waste is nonhazardous. This determination will ensure that concentration levels of the constituents of concern in the targeted wastes are below the regulatory levels. As a result, this rule, as proposed, represents only an incremental increase in burden for generators and subsequent handlers of the newly listed wastes in complying with existing RCRA information collection requirements.

The total annual respondent burden and cost for all paperwork associated with the proposed rule is represented by the new paperwork requirements for listing paint wastes, plus the incremental increase in paperwork burden under five existing Information Collection Requests (ICRs). We estimate the total annual respondent burden for all information collection activities to be approximately 8,361 hours, at an annual aggregate cost of approximately $639,747. Of the total respondent burden, only 1,457 hours per year, or 17.4 percent results from new paperwork requirements. The remaining 6,904 hour increase is derived from five existing paperwork requirements. These include: The Biennial Report, Generator Standards, Land Disposal restrictions, Manifest, and Notification.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install and use technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previous applicable instructions and requirements; train personnel to be able to respond to a collection of information; search new data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9, and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after February 13, 2001, a comment to OMB is best assured of having its full effect if OMB receives it by March 15, 2001. The proposed rule will respond to any OMB or public comments on the information

collection requirements contained in this proposal.

XI. National Technology Transfer and Advancement Act of 1995 (Pub L. 104–113, *12(d) (15 U.S.C. 272 Note))

A. Was The National Technology Transfer and Advancement Act Considered?

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 proposed rulemaking may involve voluntary consensus standards related to sampling and analysis procedures for waste characterization. Our implementation approach for waste characterization allows standard SW–846 methods, or appropriate alternatives. NTTAA does not apply to today's proposal because we are not requiring paint facilities to employ nonvoluntary consensus standards which they may deem as ''appropriate alternatives.''

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and record keeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 268

Environmental protection, Hazardous materials, Waste management, Reporting and record keeping requirements, Land Disposal Restrictions, Treatment Standards.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and record keeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and record keeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: January 25, 2001.

W. Michael McCabe,

Acting Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Secs. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901, *et seq.*

2. Section 148.18 is amended by adding paragraphs (n) and (o) to read as follows:

§ 148.18 Waste specific prohibitions—newly listed and identified wastes.

* * * * *

(n) Effective [insert date six months after date of final rule], the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K179 and K180 are prohibited from underground injection.

(o) The requirements of paragraphs (a) through (n) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of part 268 of this title; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

4. Section 261.3 is amended by adding paragraph (c)(2)(ii)(F) to read as follows:

§ 261.3 Definition of hazardous waste.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(F) Treatment residues from paint manufacturing waste solids that met the K179 listing, when they are below the constituent concentration levels specified in the listing at § 261.32(b)(6)(iii) and a new hazardous waste determination is made following the procedures specified in § 261.32(b). These exempted treatment residues must still meet all requirements specified in part 268 of this chapter prior to land disposal.

5. Section 261.4 is amended by revising paragraph (b)(15) to read as follows.

§ 261.4 Exclusions.

* * * * *

(b) * * *

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K179 and K180 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph (b)(15)(i) of this section were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate do not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under sections 307(b) or 402 of the Clean Water Act.

(v) After [insert date 24 months from date of promulgation], leachate or gas condensate derived from K179 and/or K180 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation (e.g., shutdown of wastewater treatment system), provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to

be managed in compliance with the conditions of this paragraph after the emergency ends.

* * * * *

6. Section 261.32 is amended by designating the introductory text and the table as paragraph (a), and by amending the newly designated table by adding a new subgroup ''Paint Manufacturing'' and its entries at the end of the table and by adding paragraphs (b) and (c) to read as follows:

§ 261.32 Hazardous wastes from specific sources.

(a) * * *

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	* * * * * *	
Paint Manufacturing		
K179	K179—Paint manufactuirng waste solids generated by paint (T) manufacturing facilities that, at the point of generation, contain any of the constituents identified in paragraph (b)(6)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constitutent in paragraph (b)(6)(iiiI) of this section. Paint manufacturing waste solids are: (1) waste solids generated from tank and equipment cleaning operations that use solvents, water and or caustic; (2) emission control dusts or sludges; (3) wastewater treatment sludges; and (4) off-specification product. Waste solids derived from the management of K180 by paint manufacturers would also be subject to this listing. Waste liquids derived from the management of K179 by paint manufacturers are not covered by this listing, but such liquids are subject to the K180 listing. For the purposes of this listing, paint manufacturers are defined as specified in paragraph (b) of this section.	(T)
K180	Paint manufacturing waste liquids generated by paint manufacturing facilities that, at the point of generation, contain any of the constituents identified in paragraph (b)(6)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent in paragraph (b)(6)(iii) of this section unless the wastes are stored or treated exclusively in tanks or containers prior to discharge to a POTW or under a NPDES permit. Paint manufacturing liquids are generated from tank and equipment cleaning operations that use solvents, water, and/or caustic. Waste liquids derived from the management of K179 by paint manufacturers would also be subject to this listing. Waste solids derived from the management of K180 by paint manufacturers are not covered by this listing, but such solids are subject to the K179 listing. For the purposes of this listing, paint manufacturers are defined as specified in paragraph (b) of this section.	(T)
*	* * * * * *	

* * * * *

(b) *Procedures for paint manufacturers to determine potential K179 and K180 wastes to be nonhazardous.* For purposes of § 261.32 the term ''paint manufacturing facility'' means a facility that produces paints (including undercoats, primers, finishes, sealers, enamels, refinish paints, and tinting bases), stains, varnishes (including lacquers), product finishes for original equipment manufacturing and industrial application, and, coatings (including special purpose coatings and powder coatings), but the term does not include a facility that exclusively produces miscellaneous allied products (including paint and varnish removers, thinners for lacquers or other solvent-based paint products, pigment dispersions or putty) or artist paints. The term also does not include a facility that exclusively prepares paint products (such as adding pigments to a tinting base) for sale to end users of the product. If you generate wastes that potentially fall within the K179 or K180 listing descriptions, you must use the waste analysis and handling procedures described below if you want to determine that your wastes are nonhazardous. If you have knowledge (e.g., knowledge of constituents in wastes based on existing sampling and analysis data and/or information about raw materials used, production processes used, and degradation products formed) to determine that the potential K179 or K180 wastes do not contain any of the constituents of concern identified for these types of wastes (see tables under paragraph (b)(6)(iii) of this section), you can use this knowledge, in lieu of the annual waste analysis requirements described in paragraph (b)(2)(ii) of this section, to make a nonhazardous determination.

(1) *Dilution Prohibition.* Prior to making a determination, you may only mix potential K179 wastes with other potential K179 wastes or potential K180 wastes with other potential K180 wastes, that is paint manufacturing wastes from tank and equipment cleaning operations that use solvents, water, and/or caustic; emission control dusts or sludges; wastewater treatment sludges and off specification product. You must not dilute potential K179 or K180 wastes with other waste or material before making a determination.

(2) *Determine annual waste analysis requirements.* If you generate paint manufacturing wastes that contain one or more constituents of concern, you must at least on an annual basis, use the following procedures to determine the waste analysis requirements for your wastes:

(i) You must either use the previous year's (previous 12 months) waste generation data, or, if these data are not available, estimate the total annual quantities of paint manufacturing waste solids and liquids that you will generate over the next 12 months based on current knowledge. You must determine total annual quantities separately for paint manufacturing waste solids and liquids, including the quantities of hazardous wastes (characteristic and otherwise listed) and nonhazardous wastes from tank and equipment cleaning operations that use solvents, water, and/or caustic; emission control dusts or sludges; wastewater treatment sludges and off specification product. Then, you must record the total annual waste quantities you expect to generate.

(ii) You must use the recorded total annual quantities of paint manufacturing waste solids and liquids to determine the appropriate annual waste analysis requirement for your wastes in accordance with the tiered approach described in the applicable table below. If you initially estimate that your waste generation would fall under the low volume tier, and, at any time within the 12 month period, the actual quantities of waste you generate fall

within the upper volume tier, from that time, you would be subject to the upper tier waste analysis requirements. If you have not already tested your wastes, you must test your wastes. A new 12 month period to make a hazardous waste determination for your waste also starts when the actual quantity of your waste exceeds the expected lower volume tier limit.

TIERED WASTE ANALYSIS REQUIREMENTS FOR SOLIDS

Total annual quantity of hazardous and nonhazardous paint manufacturing waste solids	Annual waste analysis requirement
40 metric tons and less.	Test Wastes or Use knowledge of Wastes
Over 40 metric tons	Test Wastes

TIERED WASTE ANALYSIS REQUIREMENTS FOR LIQUIDS

Total annual quantity of hazardous and nonhazardous paint manufacturing waste liquids	Annual waste analysis requirement[1]
100 metric tons and less.	Test Wastes or Use Knowledge of Wastes
Over 100 metric tons	Test Wastes

[1] This requirement does not apply if the liquid wastes are stored or treated exclusively in tanks or containers and then sent to a POTW or discharged under a NPDES permit.

(3) *Nonhazardous determination for wastes based on testing.* If the total annual quantity of paint manufacturing wastes your facility generates exceeds 40 metric tons for waste solids or 100 metric tons for waste liquids, you must test the wastes according to the following procedures:

(i) You must develop a waste sampling and analysis plan (if there is no appropriate existing plan) to collect samples that are representative of the wastes.

(ii) At a minimum, the plan must include:

(A) A discussion on the number of samples representative of the wastes that are needed to fully characterize the wastes;

(B) The sampling method used to obtain samples representative of the wastes;

(C) A detailed description of the test method(s) used; and

(D) How the design of the sampling plan accounts for potential variability of the wastes.

(iii) You must test the wastes for each constituent of concern that is reasonably expected to be present in the wastes (see paragraph (b)(3)(iii)(B) of this section).

(A) The constituents of concern and listing concentration levels for the paint manufacturing waste solids and liquids are identified in paragraph (b)(6)(iii) of this section.

(B) From the list of constituents of concern for paint manufacturing waste solids or liquids, you must select the constituents of concern that are reasonably expected to be present in your wastes based on your knowledge of the wastes (e.g., knowledge of the constituents in the wastes based on existing sampling and analysis data and/or information about raw materials used, and degradation products formed).

(C) You must test for all constituents of concern that are reasonably expected to be present in the paint manufacturing wastes, regardless of their concentrations in the wastes.

(iv) You must conduct sampling and analysis in accordance with your waste sampling and analysis plan developed under paragraph (b)(3)(i) of this section.

(v) You may use any reliable analytical method to demonstrate that the concentrations of constituents of concern in the waste samples are not at or above the listing levels (see applicable list under paragraph (b)(6)(iii) of this section). It is your responsibility to ensure that the sampling and analysis are unbiased, precise, and representative of the wastes.

(vi) You must ensure that the measurements are sufficiently sensitive, accurate and precise to demonstrate that the maximum concentrations of the constituents of concern in any sample analyzed are not at or above the listing levels.

(vii) In an enforcement action, you, as the generator, bear the burden of proof to establish that the concentrations of constituents of concern in your wastes are below the listing levels. For wastes determined to be nonhazardous, compliance with the requirement that concentrations of constituents of concern are below the listing levels is based on grab sampling.

(viii) If all samples you test during any three consecutive years are determined to be nonhazardous (see paragraph (b)(6)(ii) of this section), then the annual testing requirements for your wastes are suspended.

(ix) After suspension of the annual testing requirements for your wastes, if your paint manufacturing, formulation, or waste treatment processes are significantly altered (i.e., if it could result in significantly higher levels of the constituents of concern for K179 or K180), then you must resume annual testing for your wastes. In order to again suspend the annual testing requirements for your wastes, the requirement under paragraph (b)(3)(viii) of this section has to be met.

(4) *Nonhazardous determination for wastes based on knowledge.* If the total annual quantity of paint manufacturing wastes your facility generates is 40 metric tons or less for waste solids or 100 metric tons or less for waste liquids, you can use knowledge of the wastes (e.g., knowledge of constituents in wastes based on existing sampling and analysis data and/or information about raw materials used, production processes used, and degradation products formed) to conclude that concentrations for the constituents of concern in the wastes are below the listing levels.

(5) *Waste holding and handling.* During the interim period, from the point of generation to completion of hazardous waste determination, you are responsible for storing the wastes properly. If the wastes are determined to be hazardous and you are not complying with the Subtitle C storage requirements during the interim period, you are subject to an enforcement action for improper storage.

(6) *Hazardous or nonhazardous determination for wastes at the point of generation.* You must make a hazardous or nonhazardous determination for your wastes at the point of generation based on the test data and/or knowledge (see nonhazardous determination for wastes under paragraphs (b)(3) and (b)(4) of this section).

(i) *Hazardous determination.* If any of the waste being evaluated at the point of generation contains any of the constituents in the applicable list under paragraph (b)(6)(iii) of this section at a concentration equal to or greater than the hazardous level set for that constituent, the waste is a listed hazardous waste and subject to all applicable RCRA Subtitle C hazardous waste requirements.

(ii) *Nonhazardous determination.* If none of the waste being evaluated at the point of generation contains any of the constituents in the applicable list under paragraph (b)(6)(iii) of this section at concentrations equal to or greater than the hazardous levels set for these constituents, the waste is determined to be nonhazardous.

(iii) *Hazardous (listing) levels.* All concentrations in the waste for any constituents identified in this paragraph (b)(6)(iii) that are equal to or greater than the following levels:

CONSTITUENTS AND CONCENTRATION LEVELS OF CONCERN FOR K179, PAINT MANUFACTURING WASTE SOLIDS

Constituent	Chemical abstracts No.	Concentration levels (mg/kg)
Acrylamide	79–06–1	310
Acrylonitrile	107–13–1	43
Antimony	7440–36–0	2,300
Methyl Isobutyl Ketone	108–10–1	73,000
Methyl Methacrylate	80–62–6	28,000

CONSTITUENTS AND CONCENTRATION LEVELS OF CONCERN FOR K180, PAINT MANUFACTURING WASTE LIQUIDS

Constituent	Chemical abstracts No.	Concentration levels (mg/kg)
Acrylamide	79–06–1	12
Acrylonitrile	107–13–1	9.3
Antimony	7440–36–0	390
Methylene chloride	75–09–2	4500
Ethylbenzene	100–41–4	11,000
Formaldehyde	50–00–0	82,000
Methyl Isobutyl Ketone	108–10–1	340
Methyl Methacrylate	80–62–6	2,100
N-Butyl Alcohol	100–42–5	41,000
Styrene	100–42–5	4,600
Toluene	108–88–3	1,200
Xylene (mixed isomers)	1330–20–7	3,900

(7) *Hazardous or nonhazardous waste determination for wastes after treatment.* If wastes that have been determined to be K179 listed hazardous waste are treated to below hazardous levels, you, as the waste generator or treater, may make a determination that the residue of the treatment process is nonhazardous by applying the procedures described for wastes at the point of generation, in paragraphs (b)(1) through (b)(4) of this section, to the treated waste. However, the residue remains subject to the LDR treatment standards for K179 as appropriate.

(c) *Record keeping requirements for generators who have determined their wastes to be nonhazardous.* You must keep records documenting the total annual quantity of paint manufacturing waste solids and liquids you generate from tank and equipment cleaning operations that use solvents, water, and/or caustic; emission control dusts or sludges; wastewater treatment sludges and off specification product. If your annual generation of paint manufacturing wastes exceeds 40 metric tons for waste solids or 100 metric tons for waste liquids, you must also keep the following records on-site for the most recent three years of testing (from the effective date of the final rule):

(1) The documentation supporting a determination that wastes are nonhazardous based on knowledge that they do not contain any of the constituents of concern.

(2) If the wastes are determined to be nonhazardous based on testing, then the following records must be kept:

(i) The sampling and analysis plan used for collecting and analyzing samples representative of the wastes, including detailed sampling methods used to account for spatial and temporal variability of the wastes, and sample preparative, cleanup (if necessary) and determinative methods.

(ii) The sampling and analyses data (including QA/QC data) and knowledge (if used) that support a nonhazardous determination for the wastes.

(4) If storing or treating liquid paint wastes on-site in tanks or containers prior to off-site disposal, the documentation showing that the liquid paint manufacturing wastes will be stored or treated exclusively in tanks or containers off-site before discharge by a facility to a POTW or discharge under an NPDES permit.

7. Appendix VII to Part 261 is amended by adding the following waste streams in alphanumeric order (by the first column) to read as follows.

Appendix VII to Part 261—Basis for Listing Hazardous Waste

EPA hazardous waste No.	Hazardous Constituents for which listed
*	* * * * * *
K179	Acrylamide, Acrylonitrile, Antimony, Methyl Isobutyl Ketone, Methyl methacrylate
K180	Acrylamide, Acrylonitrile, Antimony, Methylene Chloride, Ethylbenzene, Formaldehyde, Methyl Isobutyl Ketone, Methyl Methacrylate, N-Butyl Alcohol, Styrene, Toluene, Xylene (mixed isomers)
*	* * * * * *

* * * * *

8. Appendix VIII to Part 261 is amended by adding in alphabetical sequence of common name the following entries:

Appendix VIII to Part 261—Hazardous Constituents

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
* * *	* * *		*
n-Butyl alcohol	1-Butanol	71–36–3	U031
* * *	* * *		*
Ethyl benzene	Same	100–41–4	
* * *	* * *		*
Methyl isobutyl ketone	4-Methyl-2-pentanone	108–10–1	U161
* * *	* * *		*
Styrene	Ethenylbenzene	100–42–5	
* * *	* * *		*
meta-Xylene	1,3-Dimethylbenzene	108–38–3	
ortho-Xylene	1,2-Dimethylbenzene	95–47–6	
para-Xylene	1,4-Dimethylbenzene	106–42–3	
Xylenes—mixed isomers (sum of o-, m-, and p-xylene concentrations).	Dimethylbenzene	1330–20–7	U239
* * *	* * *		*

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

9. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart C—Prohibitions on Land Disposal

10. Section 268.20 is added and §§ 268.21 through 268.29 are added and reserved to subpart C to read as follows:

§ 268.20 Waste specific prohibitions—paint production wastes.

(a) Effective [Insert date six months from date of publication of final rule], the wastes specified in 40 CFR part 261 as EPA Hazardous Wastes Numbers K179, and K180, soil and debris contaminated with these wastes, radioactive wastes mixed with these wastes, and soil and debris contaminated with radioactive wastes mixed with these wastes are prohibited from land disposal.

(b) The requirements of paragraph (a) of this section do not apply if:

(1) The wastes meet the applicable treatment standards specified in Subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable treatment standards established pursuant to a petition granted under § 268.44;

(4) Hazardous debris has met the treatment standards in § 268.40 or the alternative treatment standards in § 268.45; or

(5) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to these wastes covered by the extension.

(c) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in § 268.40, the initial generator must test a sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains regulated constituents in excess of the applicable subpart D levels, the waste is prohibited from land disposal, and all requirements of this part 268 are applicable, except as otherwise specified.

11. In § 268.40, the Table of Treatment Standards is amended by adding entries to F039 in alphabetical order and by adding in alphanumeric order new entries for K179 and K180 to read as follows:

§ 268.40 Applicability of treatment standards.

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/L[3], or Technology Code [4]	Concentration in mg/kg [5] unless noted as "mg/L TCLP", or Technology Code [4]
	* * *	*	*	*	*
F039	Leachate (liquids that have percolated through land disposed wastes) resulting from the disposal of more than one restricted waste classified as hazardous under Subpart D of this part. (Leachate resulting from the disposal of one or more of the following EPA Hazardous Wastes and no other Hazardous Waste retains its EPA Hazardous Waste Number(s): F020, F021, F022, F026, F027, and/or F028.)	* * * * * * *			
		Acrylamide	79–06–1	19	23
		* * * * * * *			
		Styrene	100–42–5	0.028	28
		* * * * * * *			
	* * *	*	*	*	*
K179	Paint manufacturing waste solids generated by paint manufacturing facilities that, at the point of generation, contain any of the constituents identified in paragraph § 261.32 (b)(6)(iii) at a concentration equal to or greater than the hazardous level set for that constituent in paragraph § 261.32(b)(6)(iii). Paint manufacturing waste solids are: (1) waste solids generated from tank and equipment cleaning operations that use solvents, water and or caustic; (2) emission control dusts or sludges; (3) wastewater treatment sludges; and (4) off-specification product. Waste solids derived from the management of K180 by paint manufacturers would also be subject to this listing. Waste liquids derived from the management of K179 by paint manufacturers are not covered by this listing, but such liquids are subject to the K180 listing. For the purposes of this listing, paint manufacturers are defined as specified in paragraph § 261.32(b)	Acrylamide	79–06–1	19	23
		Acrylonitrile	107–13–1	0.24	84
		Methyl isobutyl ketone	108–10–1	0.14	33
		Methyl methacrylate	80–62–6	0.14	160
		Antimony	7440–36–0	1.9	1.15 mg/L 0 TCLP
K180	Paint manufacturing waste liquids generated by paint manufacturing facilities that, at the point of generation, contain any of the constituents identified in paragraph § 261.32(b)(6)(iii) at a concentration equal to or greater than the hazardous level set for that constituent in paragraph § 261.32 (b)(6)(iii) unless the wastes are stored or treated exclusively in tanks or containers prior to discharge to a POTW or under a NPDES permit. Paint manufacturing liquids are generated from tank and equipment cleaning operations that use solvents, water, and/or caustic. Waste liquids derived from the management of K179 by paint manufacturers would also be subject to this listing. Waste solids derived from the management of K180 by paint manufacturers are not covered by this listing, but such solids are subject to the K179 listing. For the purposes of this listing, paint manufacturers are defined as specified in paragraph § 261.32(b)	Acrylamide	79–06–1	19	23
		Acrylonitrile	107–13–1	0.24	84
		n-Butyl alcohol	71–36–3	536	2.6
		Ethyl benzene	100–41–4	0.057	10
		Formaldehyde [13]	50–00–0	(WETOX or CHOXD) fb CARBN; or CMBST	CMBST
		Methylene chloride	75–09–2	0.089	30
		Methyl isobutyl ketone	108–10–1	0.14	33
		Methyl methacrylate	80–62–6	0.14	160
		Styrene	100–42–5	0.028	28
		Toluene	108–88–3	0.080	10
		Xylenes—mixed isomers (sum of o-, m-, and p-xylene concentrations)	1330–20–7	0.32	30
		Antimony	7440–36–0	1.9	1.15 mg/L 0 TCLP
* * * * *	* *				

* * * * *

Footnotes to Treatment Standard Table 268.40.

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR Part 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements technical requirements of 40 CFR part 264, subpart O or 40 CFR part 265, subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * *

[13] Wastes that do not exceed the § 261.32 listing criteria for this constituent are not subject to the treatment technology requirements, but are subject to all other numerical standards.

* * * * *

12. In § 268.48 The Table—Universal Treatment Standards is amended by adding in alphabetical sequence the following entries under the headings ''organic constituents'': (The footnotes are republished without change.)

§ 268.48 Universal treatment standards.

(a) * * *

UNIVERSAL TREATMENT STANDARDS

[Note: NA means not applicable]

Regulated constituent common name	CAS [1] No.	Wastewater standard	Nonwastewater standard
		Concentration in mg/L [2]	Concentration in mg/Kg [3] unless noted in ''mg/L TCLP''
Organic Constituents:			
* * * *	*	*	*
Styrene	100–42–5	0.028	28
* * * *	*	*	*

* * * * * * *

[1] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[2] Concentration standards for wastewaters are expressed in mg/L and are based on analysis of composite samples.

[3] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264, Subpart O, or Part 265, Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

13. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

14. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by effective date in the **Federal Register**, to read as follows.

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * *	*	*	* *
[insert date of signature of final rule].	Paint Manufacturing Listing	[insert Federal Register page numbers for final rule].	[insert effective date of final rule]
* * *	*	*	* *

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
* * *	*	*	* *
[Insert effective date of final rule] ...	Prohibition on land disposal of K179 and K180 wastes.	3004(g)(4)(C) and 3004(m).	[Insert date of publication of final rule], [Insert FR page numbers].
* * *	*	*	* *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

15. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

16. In § 302.4, Table 302.4 is amended by adding the following new entries in alphanumeric order at the end of the table, to read as follows. (The appropriate footnotes to Table 302.4 are republished without change.)

§ 302.4 Designation of hazardous substances.

* * * * *

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

[Note: All Comments/Notes Are Located at the End of This Table]

Hazardous Substance	CASRN	Regulatory synonyms	Statutory			Final RQ	
			RQ	Code †	RCRA waste No.	Category	Pounds (Kg)
*	*	*	*	*	*		*
K179	.....	.....	1*	4	K179	X	100 (45.4)
Paint manufacturing waste solids generated by paint manufacturing facilities that, at the point of generation, contain any of the constituents identified in paragraph § 261.32 (b)(6)(iii) at a concentration equal to or greater than the hazardous level set for that constituent in paragraph § 261.32(b)(6)(iii). Paint manufacturing waste solids are: (1) Waste solids generated from tank and equipment cleaning operations that use solvents, water and or caustic; (2) emission control dusts or sludges; (3) wastewater treatment sludges; and (4) off-specification product. Waste solids derived from the management of K180 by paint manufacturers would also be subject to this listing. Waste solids derived from the management of K179 by paint manufacturers are not covered by this listing, but such solids are subject to the K180 listing. For the purposes of this listing, paint manufacturers are defined as specified in paragraph § 261.32(b).							
K180	.....	.....	1*	4	K180	X	100 (45.4)
Paint manufacturing waste solids generated by paint manufacturing facilities that, at the point of generation, contain any of the constituents identified in paragraph § 261.32(b)(6)(iii) at a concentration equal to or greater than the hazardous level set for that constituent in paragraph § 261.32(b)(6)(iii) unless the wastes are stored or treated exclusively in tanks or containers prior to discharge to a POTW or under a NPDES permit. Paint manufacturing liquids are generated from tank and equipment cleaning operations that use solvents, water, and/or caustic. Waste liquids derived from the management of K179 by paint manufacturers would also be subject to this listing. Waste liquids derived from the management of K180 by paint manufacturers are not covered by this listing, but such liquids are subject to the K179 listing. For the purposes of this listing, paint manufacturers are defined as specified in paragraph § 261.32(b).							
*	*	*	*	*	*		*

† Indicates the statutory source as defined by 1, 2, 3, and 4 below.

* * * * * * *

4—Indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.

1* Indicates that the 1-pound RQ is a CERCLA statutory RQ.

* * * * * * *

[FR Doc. 01–3087 Filed 2–12–01; 8:45 am]

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Federal Register

Tuesday,
February 13, 2001

Part III

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Office of the Secretary

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2001 Subsistence Taking of Fish and Wildlife Regulations; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AF91

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2001 Subsistence Taking of Fish and Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule establishes regulations for seasons, harvest limits, methods, and means related to taking of wildlife, fish, and shellfish for subsistence uses during the 2001 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. This rulemaking replaces the fish and shellfish regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition to Include Waters Subject to Subsistence Priority,'' which expire on February 28, 2001. This rule also adds a paragraph in Section _____.25 relative to the issuance of educational and cultural harvest permits and amends the Customary and Traditional Use Determinations of the Federal Subsistence Board (Section _____.24 of Subpart C).

DATES: Section _____.24(a)(2) is effective March 1, 2001. Section _____.25(c) is effective March 1, 2001, through June 30, 2001. Sections _____.26, _____.27, and _____.28 are effective March 1, 2001, through February 28, 2002.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3888.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in McDowell required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the McDowell decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). On January 8, 1999, (64 FR 1276), the Departments extended jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska* v. *Babbitt.*

Consistent with Subparts A, B, and C of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participated in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents, with personal knowledge of local conditions and resource requirements, to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils had a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, presented their Council's recommendations at the Board meeting of December 5–6, 2000.

Summary of Changes

Section _____.24 (Customary and traditional use determinations) was originally published in the **Federal Register** (57 FR 22940) on May 29, 1992. Since that time, the Board has made a number of Customary and Traditional Use Determinations at the request of impacted subsistence users. Those modifications, along with some administrative corrections, were published in the **Federal Register** (59 FR 27462, published May 27, 1994; 59 FR 51855, published October 13, 1994; 60 FR 10317, published February 24, 1995; 61 FR 39698, published July 30, 1996; 62 FR 29016, published May 29, 1997; 63 FR 35332, published June 29, 1998; 63 FR 46148, published August 28, 1998; 64 FR 1276, published January 8, 1999; and 64 FR 35776, published July 1, 1999). During its December 5–6,

2000, meeting, the Board made additional determinations in addition to various annual season and harvest limit changes. The public has had extensive opportunity to review and comment on all changes. Additional details on the recent Board modifications are contained below in Analysis of Proposals Adopted by the Board.

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations are also subject to an annual review process providing for modification each year. Proposed Subpart D regulations for the 2001–2002 seasons and harvest limits, and methods and means were published on February 2, 2000, in the **Federal Register** (65 FR 5197). A 55-day comment period providing for public review of the proposed rule and calling for proposals was advertised by mail, radio, and newspaper. During that period, the Regional Councils met and, in addition to other Regional Council business, received suggestions for proposals from the public. The Board received a total of 44 proposals for changes to Customary and Traditional Use Determinations or to Subpart D. Subsequent to the review period, the Board prepared a booklet describing the proposals and distributed it to the public. The public had an additional 49 days in which to comment on the proposals for changes to the regulations. The ten Regional Councils met again, received public comments, and formulated their recommendations to the Board on proposals for their respective regions. Ten of the proposals were withdrawn from consideration by their originators. These final regulations reflect Board review and consideration of Regional Council recommendations and public comments.

Analysis of Proposals Rejected by the Board

The Board rejected six proposals. All but two of these rejections were based on recommendations from the respective Regional Council. In those two other cases, the Regional Council recommendations to close a sport fishery in one instance and reduce harvest limits in another did not have sufficient justification, imposed an unnecessary restriction on the taking for nonsubsistence uses and were without biological justification.

The Board rejected two proposals requesting that State subsistence fishing permits be replaced with a Federal permit. In each case, the Federal permit would have imposed an undue burden on the user and duplicated permitting requirements already in place without adding any net benefit.

One proposal requested establishing a Federal subsistence fishery in the marine portion of a bay/river area. In this case, the area proposed for the fishery was not under jurisdiction of the Federal Subsistence Program.

One proposal requested restricting the subsistence fishery to the estuary portion of a river system. This proposal was rejected because it would be detrimental to the subsistence users who fish at many locations throughout the river system.

The Board deferred action on six proposals in order to assemble additional fisheries data, to allow communities or Regional Councils additional time to review the issues and provide additional information, or to work with an international treaty commission.

Analysis of Proposals Adopted by the Board

The Board adopted 21 proposals. Some of these proposals were adopted as submitted and others were adopted with modifications suggested by the respective Regional Council or developed during the Board's public deliberations.

All of the adopted proposals were recommended for adoption by at least one of the Regional Councils and were based on meeting customary and traditional uses, harvest practices, or protecting fish populations. Detailed information relating to justification for the action on each proposal may be found in the Board meeting transcripts, available for review at the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska or on the Office of Subsistence Management website (http://www.r7.fws.gov/asm/home.html). Additional technical clarifications and removal of excess materials have been made, which result in a more readable document. Also wording has been added based on previous Board action and public comment that allows for the Office of Subsistence Management to issue permit renewals for the taking of a limited number of fish or wildlife for educational or cultural purposes.

Kotzebue Fishery Management Area

The Board adopted two proposals affecting residents of the Kotzebue Fishery Management Area resulting in the following changes to the regulations found in § _____.27.

- Deleted a subsistence closure for char at the mouth of the Kelly River.
- Revised the regulations relative to blocking a stream with a net for the taking of whitefish and pike.

Yukon-Northern Fishery Management Area

The Board adopted four proposals affecting residents of the Yukon-Northern Fishery Management Area resulting in the following changes to the regulations found in § _____.27.

Deleted a restriction on subsistence fishermen who also fish commercially.

- Deleted a requirement for a non-salmon harvest permit on the Tanana River.
- Revised where a permit is required for whitefish and suckers on Birch Creek.
- Restricted the targeting of chinook salmon for dog food in the Yukon River drainage.

Kuskokwim Fishery Management Area

The Board adopted one proposal affecting residents of the Kuskokwim Fishery Management Area resulting in the following change to the regulations found in § _____.27.

- Revised the regulations relating to the taking of trout by certain villages.

Bristol Bay Fishery Management Area

The Board adopted one proposal affecting residents of the Bristol Bay Fishery Management Area resulting in the following change to the regulations found in § _____.27.

- Revised the regulations relating to the marking of subsistence-caught coho salmon.

Prince William Sound Fishery Management Area

The Board adopted four proposals affecting residents of the Prince William Sound Fishery Management Area resulting in the following changes to the regulations found in § _____.24 and in § _____.27.

- Established a customary and traditional use determination in the Chitina Subdistrict.
- Opened the salmon season earlier in the Glennallen Subdistrict.
- Revised the season and harvest limits for the Batzulnetas fishery.
- Revised the customary and traditional use determination for the Upper Copper River and the Batzulnetas areas.

Yakutat Fishery Management Area

The Board adopted one proposal affecting residents of the Yakutat Fishery Management Area resulting in the following change to the regulations found in § _____.24.

• Revised the customary and traditional use determination for the Yakutat Fishery Management Area.

Southeastern Alaska Fishery Management Area

The Board adopted nine proposals affecting residents of the Southeastern Alaska Fishery Management Area resulting in the following changes to the regulations found in § _____.24 and in § _____.27.

• Revised the customary and traditional use determination for the Southeastern Alaska Fishery Management Area.

• Revised harvest limits for trout and Dolly Varden throughout the Southeastern Alaska Fishery Management Area and established a harvest limit and methods of take for steelhead trout on Prince of Wales Island.

• Revised the harvest limit for sockeye salmon in a number of areas.

• Closed three drainages to the non-subsistence harvest of sockeye salmon.

• Provided for the harvest of coho salmon in a portion of the Southeastern Alaska Fishery Management Area.

• Closed a portion of a river system to the use of nets.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture—Forest Service, decided to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below were approved by OMB under 44 U.S.C. 3501 and were assigned clearance number 1018–0075, which expires July 31, 2003. The information collection requirements described below will be submitted to OMB for approval beyond that date. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

The collection of information will be achieved through the use of the Federal Subsistence Harvest Permit Application. This collection of information will establish whether the applicant qualifies to participate in a Federal subsistence fishery on public lands in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence fisheries on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy fish and wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 222 ARLSQ, Washington, DC 20240. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However,

we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon and $0.58 per pound for other fish, would equate to about $34 million in food value Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising full management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Curt Wilson, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board amends Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART_____—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § _____.24(a)(2) is revised to read as follows:

§ _____24 Customary and traditional use determinations.

(a) * * *

(2) *Fish determinations.*

Area	Species	Determination
Kotzebue Area	All fish	Residents of the Kotzebue Area.
Norton Sound—Port Clarence Area	All fish	Residents of the Norton Sound-Port Clarence Area.
Yukon-Northern Area:		
Yukon River drainage	Salmon, other than Yukon River Fall Chum salmon.	Residents of the Yukon Area, including the community of Stebbins.
Yukon River drainage	Yukon River Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage	Freshwater fish species (other than salmon), including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon Northern Area.
Remainder of the Yukon-Northern Area	All fish	Residents of the Northern Area, except for those domiciled in Unit 26–B.
Kuskokwim Area	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
	All other fish other than herring	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.

Area	Species	Determination
Waters around Nunivak Island	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
Bristol Bay Area:		
Nushagak District, including drainages flowing into the district.	Salmon and freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage	Salmon and other freshwater fish	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichak District—Iliamna-Lake Clark drainage.	Salmon and other freshwater fish	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Togiak District, freshwater drainage flowing into the district, and the other community of Manokotak.
Togiak District	Herring spawn on kelp	Residents of the Togiak District.
Remainder of the Bristol Bay Area	All fish	Residents of the Bristol Bay Area.
Aleutian Islands Area	All fish	Residents of the Aleutian Islands Area and the Pribilof Islands.
Alaska Peninsula Area	Halibut	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area.	Residents of the Alaska Peninsula Area.
Chignik Area	Halibut, salmon and fish other than steelhead and rainbow trout.	Residents of the Chignik Area.
Kodiak Area—except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) midstream Shelikof Strait, and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak Area	Fish other than steelhead and rainbow trout and salmon.	Residents of the Kodiak Area.
Cook Inlet Area	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
Prince William Sound Area:		
South-Western District and Green Island	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the Village of Tatitlek and Ellamar.
Chitinia Subdistrict of the Upper Copper River District.	Salmon	Residents of Chitina, Cantwell, Chistochina, Copper Center, Gakona, Gulkana, Mentasta Lake, and Tazlina.
Glennallen Subdistrict of the Upper Copper River District.	Salmon	Residents of the Prince William Sound Area and residents of Healy Lake, Dot Lake, Northway, Tanacross, Tetlin, Tok and those individuals living along the Alaska Highway from the Alaskan/Canadian border to Dot Lake, along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Waters of the Copper River between National Park Service regulatory makers located near the mouth of Tanada Creek, and in Tanada Creek between National Park Servcie regulatory markers identifying the open waters of the creek.	Salmon	Residents of Mentasta Lake and Dot Lake.
Prince William Sound Area—remainder	Salmon	Residents of the Prince William Sound Area.
Yakutat Area:		
Freshwater upstream from the terminus of of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Remainder of the Yakutat Area	Dolly Varden, trouth, smelt and eulachon.	Residents of Southeastern Alaska and Yakutat Area.

Area	Species	Determination
Southeastern Alaska Area:		
District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt and eulachon.	Resdents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20′ W. long. and east of 132°25′ W. long.
District 3—Section 3–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the townsite of Hydaburg.
District 3—Section A	Halibut and bottomfish	Residents of Southeast Area.
District 3–Section 3–B in waters east of a line from Point Idefonso to Tranquil Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings they existed in January 1989, and those residents of the City of Craig and on Prince Wales Island within the boundaries of the Shan Seet Corporation land holdings as they existed in January 1989.
District 3—Section 3–C in waters of Sarkar lakes	Salmon, Dolly Varden trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they existed in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they existed in January 1989.
District 5—North of a line from Point Barrier to Boulder Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage eulachon Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in north of the Varden, drainages which empty into Section 13–B north latitude of trout, of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
Southeastern Alaska Area—Remainder	Dolly Varden, trout, smelt and eulachon.	Residents of Southeastern Alaska and Yakutat Areas.

* * * * *

Subpart D—Subsistence Taking of Fish and Wildlife

3. In Subpart D of 36 CFR part 242 and 50 CFR part 100, § _____.25(c) is revised effective March 1, 2001, through June 30, 2001, to read as follows:

§ _____.25 Subsistence taking of wildlife.

* * * * *

(c) Possession and transportation of wildlife. (1) Except as specified in paragraph (c)(3)(ii), (c)(4), or (c)(5) of this section, or as otherwise provided, you may not take a species of wildlife in any Unit, or portion of a Unit, if your total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that Unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § _____.6(f)(3), or as otherwise provided for by this Part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(3) Harvest limits. (i) Harvest limits, including those related to ceremonial uses, authorized by this section and harvest limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § _____.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The U.S. Fish and Wildlife Service, Office of Subsistence Management may issue a permit to harvest wildlife for a qualifying cultural/educational program to an organization that has been granted a Federal subsistence permit for a similar event within the previous five years. A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Office of Subsistence Management 60 days prior to the earliest desired date of harvest. Permits will be issued for no more than one large mammal per culture/education camp. Large mammal species allowed to be harvested are limited to deer, moose, caribou, black bear, and mountain goat. Any animals harvested will count against any established Federal harvest quota for the area in which harvested. Appeal of a rejected request can be made to the Federal Subsistence Board. Application for an initial permit for a qualifying cultural/educational program, for a permit when the circumstances have changed significantly, when no permit has been issued within the previous five years, or when there is a request for harvest in excess of that provided above, will be considered by the Federal Subsistence Board.

(5) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that if you have taken a harvest limit for a particular species under a trapping season, you may take additional animals under the harvest limit specified for a hunting season or vice versa.

(6) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(7) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(8) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § _____.6, the permit shall be furnished in place of a signed statement.

(9) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § _____.6, shall promptly deliver the wildlife to that rural Alaska resident.

(10) You may not possess, transport, give, receive, or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(11) Evidence of sex and identity. (i) If subsistence take of Dall sheep is restricted to a ram, you may not possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, you may not possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal, except in Units 11 and 13 where you may possess either sufficient portions of the external sex organs (still attached to a portion of the carcass) or the head (with or without antlers attached; however, the antler stumps must remain attached), to indicate the sex of the harvested moose; however, this paragraph (c)(11)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, you may not possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. If you possess a set of antlers with less than the required number of brow tines on one antler, you must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (c)(11)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(12) You must leave all edible meat from caribou and moose harvested in Units 9(B), 17, and 19(B) prior to October 1 on the bones of the front quarters and hind quarters until you remove the meat from the field or process it for human consumption.

4. In Subpart D of 36 CFR part 242 and 50 CFR part 100, §_____.26 is added and reserved and §§_____.27 and _____.28 are added effective March 1, 2001, through February 28, 2002, to read as follows:

§ _____.26 [Reserved]

§ _____.27 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if

you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.

(b) *Definitions.* The following definitions shall apply to all regulations contained in this section:

ADF&G means the Alaska Department of Fish and Game.

Anchor means a device used to hold a fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

Beach seine means a floating net which is designed to surround fish and is set from and hauled to the beach.

Cast net means a circular net with a mesh size of no more than 1½ inches and weights attached to the perimeter which, when thrown, surrounds the fish and closes at the bottom when retrieved.

Char means the following species: Arctic char (*Salvelinus alpinis*); lake trout (*Salvelinus namaycush*); brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

Depth of net means the perpendicular distance between cork line and lead line expressed as either linear units of measure or as a number of meshes, including all of the web of which the net is composed.

Dip net means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed 5 feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Drainage means all of the waters comprising a watershed, including tributary rivers, streams, sloughs, ponds, and lakes, which contribute to the water supply of the watershed.

Drift gillnet means a drifting gillnet that has not been intentionally staked, anchored, or otherwise fixed in one place.

Fishwheel means a fixed, rotating device, with no more than four baskets on a single axle, for catching fish, which is driven by river current or other means.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn headland to headland across the mouth as the waters flow into the sea.

Fyke net means a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gillnet means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

Groundfish or *bottomfish* means any marine fish except halibut, osmerids, herring and salmonids.

Hand purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Handline means a hand-held and operated line, with one or more hooks attached.

Harvest limit means the maximum legal take per person or designated group, per specified time period, in the area in which the person is fishing, even if part or all of the fish are preserved. A fish, when landed and killed by means of rod and reel becomes part of the harvest limit of the person originally hooking it.

Herring pound means an enclosure used primarily to contain live herring over extended periods of time.

Household means a person or persons having the same residence.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Jigging gear means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice, or from shore ice and which are drawn through the water by hand.

Lead means either a length of net employed for guiding fish into a seine, set gillnet, or other length of net, or a length of fencing employed for guiding fish into a fishwheel, fyke net, or dip net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district, or section.

Long line means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

Mechanical jigging machine means a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

Mile means a nautical mile when used in reference to marine waters or a statute mile when used in reference to fresh water.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15-day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Rockfish means all species of the genus Sebastes.

Rod and reel means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole. In either case, bait or an artificial fly or lure is used as terminal tackle. This definition does not include the use of rod and reel gear for snagging.

Salmon means the following species: pink salmon (*Oncorhynchus gorbuscha*); sockeye salmon (*Oncorhynchus nerka*); chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

Salmon stream means any stream used by salmon for spawning, rearing, or for traveling to a spawning or rearing area.

Set gillnet means a gillnet that has been intentionally set, staked, anchored, or otherwise fixed.

Spear means a shaft with a sharp point or fork-like implement attached to one end which is used to thrust through the water to impale or retrieve fish and which is operated by hand.

Stretched measure means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet; the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under 5-pound weight.

Subsistence fishing permit means a permit issued by the Alaska Department

of Fish and Game, unless specifically identified otherwise.

To operate fishing gear means any of the following: to deploy gear in the water; to remove gear from the water; to remove fish or shellfish from the gear during an open season or period; or to possess a gillnet containing fish during an open fishing period, except that a gillnet which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish, and includes beam, otter, or pelagic trawl.

Troll gear means a power gurdy troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy; hand troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing, or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical, or other assisting device or attachment; or dinglebar troll gear consisting of one or more lines, retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

Trout means the following species: cutthroat trout (*Oncorhynchus clarki*) and rainbow trout or steelhead trout (*Oncorhynchus mykiss*).

(c) *Methods, means, and general restrictions*. (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A hand purse seine;
(v) A beach seine;
(vi) Troll gear;
(vii) A fish wheel;
(viii) A trawl;
(ix) A pot;
(x) A longline;
(xi) A fyke net;
(xii) A lead;
(xiii) A herring pound;
(xiv) A dip net;
(xv) Jigging gear;
(xvi) A mechanical jigging machine;
(xvii) A handline;
(xviii) A cast net;
(xix) A rod and reel; and
(xx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of 6 inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with paragraph (c)(2)(i) of this section, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least 6 inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed release device, designed to release in no more than 30 days in salt water, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed release device. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Except as otherwise provided for in this section, you may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses.

(5) You may not use live non-indigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fishwheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

(14) Except as provided elsewhere in this section, you may not take rainbow trout or steelhead trout.

(15) You may not use as bait for commercial or sport fishing purposes fish taken for subsistence use or under subsistence regulations in this part.

(16) You may not accumulate harvest limits authorized in this section or § __.28 with harvest limits authorized under State regulations.

(17) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types;

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit

for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel is the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(18) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(19) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which bag limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally-taken subsistence fish.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user, you (beneficiary) may designate another Federally-qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (f) of this section.

(2) The U.S. Fish and Wildlife Service, Office of Subsistence Management may issue a permit to harvest fish for a qualifying cultural/educational program to an organization that has been granted a Federal subsistence permit for a similar event within the previous 5 years. A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Office of Subsistence Management 60 days prior to the earliest desired date of harvest. Permits will be issued for no more than 25 fish per culture/education camp. Appeal of a rejected request can be made to the Federal Subsistence Board. Application for an initial permit for a qualifying cultural/educational program, for a permit when the circumstances have changed significantly, when no permit has been issued within the previous 5 years, or when there is a request for harvest in excess of that provided in this paragraph (e)(2), will be considered by the Federal Subsistence Board.

(3) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you shall keep accurate daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(f) *Relation to commercial fishing activities.* (1) If you are a Federally-qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) You may not possess, transport, give, receive, or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [Reserved]

(i) *Fishery management area restrictions.* (1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a mesh size larger than 7 inches.

(iv) You may not obstruct more than one-half the width of a stream with any gear used to take fish for subsistence uses, except from May 15 to June 30 and August 15 to October 31 when taking whitefish or pike in steams, creeks, or sloughs within the Selawik and Kobuk River drainages. Only gillnets 60 feet or less in length with a mesh size from 2½ to 4½ inches may be used. You must check your net at least once in every 24-hour period.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Canal Point light, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) In the Port Clarence District, you may take fish at any time except as specified by emergency regulation.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes 7 days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon

only from 8:00 a.m. Monday until 8:00 p.m. Saturday;

(C) In Subdistricts 1—3, you may take salmon other than chum salmon by beach seine during periods established by emergency regulations.

(iii) You may take salmon only by gillnets, beach seines, fishwheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored fishing net.

(vi) You may take fish for subsistence purposes without a subsistence fishing permit except that a subsistence fishing permit is required in the Norton Sound District for net fishing in all waters from Cape Douglas to Rocky Point.

(vii) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Canal Point Light and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° W. long., including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time.

(ii) In the following locations, you may take salmon only during the open weekly fishing periods of the commercial salmon fishing season and may not take them for 24 hours before the opening of the commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6:00 p.m. Friday until 6:00 p.m. Wednesday.

(iii) During any commercial salmon fishing season closure of greater than five days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–D, salmon may not be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday.

(iv) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(v) In Districts 1, 2, 3, and Subdistrict 4–A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the commercial salmon fishing season.

(vi) In Districts 1, 2, and 3:

(A) After the opening of the commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each commercial salmon fishing period.

(vii) In Subdistrict 4–A after the opening of the commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each commercial salmon fishing period; however, you may take king salmon during the commercial fishing season, with drift gillnet gear only, from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(viii) In the upper Yukon River drainage, you may not subsistence fish, except for whitefish and suckers, in Birch Creek and waters within 500 feet of its mouth.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks; and

(D) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(x) You may not subsistence fish in the Delta River.

(xi) You may not subsistence fish in the following rivers and creeks and within 500 feet of their mouths: Big Salt River, Hess Creek, and Beaver Creek.

(xii) You may not subsistence fish in the Deadman, Jan, Fielding, and Two-Mile Lakes.

(xiii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiv) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the commercial salmon fishing season using gillnets with mesh larger than six-inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xvi) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4–A upstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4–A downstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14.

(xvii) Unless otherwise specified in this section, you may take fish other than salmon and halibut by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes;

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length;

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial, personal use, or subsistence fishing gear except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the ''Slide,'' you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no minimum distance requirement between fish wheels;

(D) During the commercial salmon fishing season, within the Yukon River and the Tanana River below the

confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods.

(xviii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xix) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) For whitefish and suckers in Birch Creek upstream from the Steese Highway bridge at Mile 140;

(D) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xx) Only one subsistence fishing permit will be issued to each household per year.

(xxi) In Districts 1, 2, and 3, you may not possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xxii) In the Yukon River drainage, chinook (king) salmon are to be used primarily for human consumption and not specifically targeted for dog food, except that whole fish unfit for human consumption (due to disease, deterioration, deformities), scraps, and small fish (jack kings 16 inches or less) may be fed to dogs.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, you may not take salmon for 16 hours before, during, and for 6 hours after, each open commercial salmon fishing period for District 1.

(iii) In District 1, Kuskokuak Slough only from June 1 through July 31, you may not take salmon for 16 hours before and during each open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in the district.

(vi) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before, during, and 6 hours after each open commercial salmon fishing period.

(vii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each open commercial salmon fishing period.

(ix) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Holitna, Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(x) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xi) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel.

(xii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xiv) The maximum depth of gillnets is as follows:

(A) Gillnets with 6-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than 6-inch mesh may not be more than 35 meshes in depth.

(xv) You may take halibut only by a single hand-held line with no more than two hooks attached to it.

(xvi) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xvii) Rainbow trout may be taken by only residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak. The following restrictions apply:

(A) You may take rainbow trout only by the use of gillnets, dip nets, fyke nets, handline, spear, rod and reel, or jigging through the ice;

(B) You may not use gillnets, dip nets, or fyke nets for targeting rainbow trout from March 15—June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes;

(D) There are no harvest limits with handline, spear, rod and reel, or jigging.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during open commercial salmon fishing periods.

(iii) In the Egegik River from 9:00 a.m. June 23 through 9:00 a.m. July 17, you may take salmon only from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin only by drift and set gillnets.

(vii) Outside the boundaries of any district, you may take salmon only by set gillnet, except that you may also take salmon as follows:

(A) By spear in the Togiak River excluding its tributaries;

(B) From August 30 through September 30, by spear, dip net, and

gillnet along a 100 yard length of the west shore of Naknek Lake near the outlet to the Naknek River as marked by ADF&G regulatory markers;

(C) From August 15 through September 15, by spear, dip net, and gillnet at Johnny's Lake on the northwestern side of Naknek Lake;

(D) From October 1 through November 15, by spear, dip net, and gillnet at the mouth of Brooks River at Naknek Lake;

(E) At locations and times specified in paragraphs (i)(5)(vii) (B) through (D) of this section, gillnets may not exceed 5 fathoms in length and may not be anchored or tied to a stake or peg, and you must be present at the net while fishing the net.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik, River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, herring, capelin, and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon and char only under authority of a subsistence fishing permit.

(xv) Only one subsistence fishing permit may be issued to each household per year.

(xvi) In the Togiak River section and the Togiak River drainage, you may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54° 36' North latitude.

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except:

(A) That from June 1 through September 15, you may not use a salmon seine vessel to take salmon for subsistence 24 hours before, during, or 24 hours after an open commercial salmon fishing period within a 50–mile radius of the area open to commercial salmon fishing;

(B) That from June 1 through September 15, you may use a purse seine vessel to take salmon only with a gillnet and you may not have any other type of salmon gear on board the vessel while subsistence fishing; or

(C) As may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amlia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters of Unalaska Lake, its tributaries and outlet stream;

(B) The waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the ''Bishop's House'' at 53° 52.64′ N. lat., 166° 32.30′ W. long. to a point on Amaknak Island at 53° 52.82′ N. lat., 166° 32.13′ W. long., and north of line from a point south of Agnes Beach at 53° 52.28′ N. lat., 166° 32.68′ W. long. to a point at 53° 52.35′ N. lat., 166° 32.95′ W. long. on Amaknak Island;

(C) Within Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point, waters within 250 yards of any anadromous stream, except the outlet stream of Unalaska Lake, which is closed under paragraph (i)(6)(iv)(A) of this section;

(D) The waters of Summers and Morris Lakes and their tributaries and outlet streams;

(E) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;

(F) Waters of McLees Lake and its tributaries and outlet stream;

(G) Waters in Reese Bay from July 1 through July 9, within 500 yards of the outlet stream terminus to McLees Lake;

(H) All freshwater on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(xi) The daily bag limit for halibut is two fish, and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the longitude of the tip of Cape Sarichef and south of the latitude of the tip of Cape Menshikof.

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time except within 24 hours before and

within 12 hours following each open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(x) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(xi) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156° 20.22′ West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) You may take fish, other than rainbow trout and steelhead trout, at any time, except as may be specified by a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) You may take salmon, trout and, char only under the authority of a subsistence fishing permit.

(iv) You must keep a record on your permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(v) If you hold a commercial fishing license, you may not subsistence fish for salmon from 48 hours before the first commercial salmon fishing opening in the Chignik Area through September 30.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake you may not use purse seines.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(x) The daily bag limit for halibut is two fish, and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58° 51.10′ N. lat.), west of 150° W. long., north of 55° 30.00′ N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156° 20.22′ W. long.).

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed;

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) Womens Bay closed waters—all waters inside a line from the tip of the Nyman Peninsula (57°43.23′ N. lat., 152°31.51′ W long.), to the northeastern tip of Mary's Island (57°42.40′ N. lat., 152°32.00′ W. long.), to the southeastern shore of Womens Bay at 57°41.95′ N. lat., 152°31.50′ W. long.;

(B) Buskin River closed waters—all waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80′ N. lat, 152°28.38′ W. long., to a point offshore at 57°45.35′ N. lat, 152°28.15′ W. long., to a marker located onshore south of the river mouth at approximately 57°45.15′ N. lat., 152°28.65′ W. long.;

(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek;

(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from April 15 through June 30.

(v) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(vii) You may take fish other than salmon and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(x) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xi) The daily bag limit for halibut is two fish, and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 51′ 06″ N. lat.) and a line extending south from Cape Fairfield (148° 50′ 15″ W. long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, at any time in the Cook

Inlet Area. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may not take salmon, Dolly Varden, trout, grayling, char, and burbot for subsistence purposes.

(iii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section).

(iv) You may only take smelt with dip nets or gillnets in fresh water from April 1 through June 15. You may not use a gillnet exceeding 20 feet in length and 2 inches in mesh size. You must attend the net at all times when it is being used. There are no harvest or possession limits for smelt.

(v) Gillnets may not be used in freshwater, except for the taking of whitefish in the Tyone River drainage or for the taking of smelt.

(11) *Prince William Sound Area*. The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, at any time in the Prince William Sound Area.

(ii) You may take salmon in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from May 15 through September 30;

(B) You may not take salmon in the Chitina Subdistrict.

(iii) You may take salmon in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit available from the National Park Service under the following conditions:

(A) You may take salmon only in those waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels, dip nets, and rod and reel on the Copper River and only dip nets, spears, and rod and reel in Tanada Creek;

(C) You may take salmon only from May 15 through September 30 or until the season is closed by special action;

(D) You may retain chinook salmon taken in a fishwheel in the Copper River. You may not take chinook salmon in Tanada Creek;

(E) You must return the permit to the National Park Service no later than October 15.

(iv) You may take salmon for subsistence purposes with no bag or possession limits in those waters of the Southwestern District and along the northwestern shore of Green Island from the westernmost tip of the island to the northernmost tip, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of 4 inches, or gillnets up to 150 fathoms in length, except that you may take pink salmon only in fresh water using dip nets;

(B) You may take salmon only from May 15 until 2 days before the commercial opening of the Southwestern District, 7 days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from 2 days following the closure of the commercial salmon season until September 30, 7 days per week;

(C) You may not fish within the closed waters areas for commercial salmon fisheries.

(v) You may take salmon for subsistence purposes with no bag or possession limits in those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of 4 inches, or gillnets up to 150 fathoms in length with a maximum mesh size of 6¼ inches, except that you may only take pink salmon in fresh water using dip nets;

(B) You may take salmon only from May 15 until 2 days before the commercial opening of the Eastern District, 7 days per week during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from 2 days following the closure of the commercial salmon season until October 31, 7 days per week;

(C) You may not fish within the closed water areas for commercial salmon fisheries.

(vi) If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(vii) You may only take salmon in the waters of the Upper Copper River District, or in the vicinity of the Native Village of Batzulnetas.

(viii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(ix) In the Glennallen Subdistrict, you may take salmon only by fish wheels, rod and reel, or dip nets.

(x) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain. You must register your fish wheel with ADF&G. Your registration number and name and address must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water; only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel. You must remove the fish wheel from the water at the end of the permit period. You may operate only one fish wheel at any one time. You may not set or operate a fish wheel within 75 feet of another fish wheel. No fish wheel may have more than two baskets. A wood or metal plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least 1 inch high, must be attached to each fish wheel so that the name and address are plainly visible.

(xi) You must personally operate the fish wheel or dip net. You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xii) Except as provided in this section, you may take fish other than salmon and freshwater fish species for subsistence purposes without a subsistence fishing permit.

(xiii) You may take salmon and freshwater fish species only under authority of a subsistence fishing permit.

(xiv) Only one subsistence fishing permit will be issued to each household per year.

(xv) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) You must return your permit no later than October 31, or you may be denied a permit for the following year;

(C) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by this section and during fishing operations;

(D) Only the permit holder and the authorized member of the household listed on the subsistence permit may take salmon;

(E) A permit holder must record on ADF&G forms all salmon taken immediately after landing the salmon.

(xvi) The total annual possession limit for an Upper Copper River District

subsistence salmon fishing permit is as follows:

(A) For a household with 1 person, 30 salmon, of which no more than 5 may be chinook salmon if taken by dip net;

(B) For a household with 2 persons, 60 salmon, of which no more than 5 may be chinook salmon if taken by dip net; plus 10 salmon for each additional person in a household over 2 persons, except that the household's limit for chinook salmon taken by dip net does not increase;

(C) Upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with 1 person, of which no more than 5 may be chinook salmon if taken by dip net; or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be chinook salmon if taken by dip net.

(xvii) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. A permit may only be issued following approval by ADF&G of a harvest assessment plan to be administered by the permitted council or organization. The harvest assessment plan must include: provisions for recording daily catches for each fish wheel; sample data collection forms; location and number of fish wheels; the full legal name of the individual responsible for the lawful operation of each fish wheel; and other information determined to be necessary for effective resource management. The following additional provisions apply to subsistence fishing permits issued under this paragraph (i)(11)(xvii):

(A) The permit will list all households and household members for whom the fish wheel is being operated;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the department when households are added to the list, and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization, are not eligible for a separate household subsistence fishing permit for the Upper Copper River District.

(xviii) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless both lobes of the caudal (tail) fin have been immediately removed from the salmon.

(xix) In locations open to commercial salmon fishing other than described for the Upper Copper River District, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of 1 person;

(B) 30 salmon for a household of 2 persons and 10 salmon for each additional person in a household;

(C) No more than five king salmon may be taken per permit.

(12) *Yakutat Area.* The Yakutat Area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may not take salmon during the period commencing 48 hours before an opening of commercial salmon net fishing season until 48 hours after the closure. This applies to each river or bay fishery individually.

(iii) When the length of the weekly commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) You may take salmon, trout (other than steelhead,) and char only under authority of a subsistence fishing permit. You may only take steelhead trout in the Situk and Ahrnklin Rivers and only under authority of a subsistence fishing permit.

(v) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vi) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(viii) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(ix) You must remove the dorsal fin from subsistence-caught salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xi) With a subsistence fishing permit, you may harvest at any time up to 10 Dolly Varden with no minimum size.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, in the Southeastern Alaska Area at any time.

(ii) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

(iii) You must possess a subsistence fishing permit to take salmon, trout, or char.

(iv) You may take steelhead trout on Prince of Wales Island only under the terms of a Federal subsistence fishing permit. The annual harvest limit is two fish, 36 inches or larger. You may use only a dip net or rod and reel with artificial lure or fly. You may not use bait.

(v) You may take coho salmon in Subdistricts 3(A), (B), and (C) only under the terms of a Federal subsistence fishing permit. There is no closed season. The daily harvest limit is 20 fish per household. Only spears, dip net, and rod and reel may be used. Bait may be used only from September 15 through November 15.

(vi) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell, and Sitka.

(viii) You shall immediately remove the pelvic fins of all salmon when taken.

(ix) You may not possess subsistence-taken and sport-taken salmon on the same day.

(x) For the Salmon Bay Lake system, the daily harvest and season limit per household is 30 sockeye salmon.

(xi) For Virginia Lake (Mill Creek), the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xii) For Thoms Creek, the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xiii) The Sarkar River system above the bridge is closed to the use of all nets by both Federally-qualified and non-Federally qualified users.

(xiv) Only Federally-qualified subsistence users may harvest sockeye

salmon in streams draining into Falls Lake, Gut Bay, or Pillar Bay. In the Falls Lake and Gut Bay drainages, the possession limit is10 sockeye salmon per household. In the Pillar Bay drainage, the individual possession limit is15 sockeye salmon with a household possession limit of 25 sockeye salmon.

(xv) In Baranof Lake, Florence Lake, Hasselborg Lake and River, Mirror Lake, Virginia Lake, and Wilson Lake, in addition to the requirement for a subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, cutthroat, and rainbow trout apply:

(A) You may harvest at any time up to 10 Dolly Varden of any size;

(B) You may harvest at any time six cutthroat or rainbow trout in combination. You may only retain fish between 11'' and 22''. You may only use a rod and reel without bait.

(xvi) In all waters, other than those identified in paragraph (i)(13)(xv) of this section, in addition to the requirement for a subsistence fishing permit, you may harvest at any time: Dolly Varden of any size with a daily possession limit of 10 fish; cutthroat and rainbow trout with a slot size limit of 11'' to 22'' with a daily possession limit of 2 fish in combination. You may only use a rod and reel without bait.

§ _____.28 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) *Definitions.* The following definitions shall apply to all regulations contained in this section:

Abalone iron means a flat device which is used for taking abalone and which is more than 1 inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

ADF&G means the Alaska Department of Fish and Game.

Crab means the following species: red king crab (*Paralithodes camshatica*); blue king crab (*Paralithodes platypus*); brown king crab (*Lithodes aequispina*); *Lithodes couesi;* all species of tanner or snow crab (*Chionoecetes* spp.); and Dungeness crab (*Cancer magister*).

Diving gear means any type of hard hat or skin diving equipment, including SCUBA equipment; a tethered, umbilical, surface-supplied unit; or snorkel.

Gear means any type of fishing apparatus.

Grappling hook means a hooked device with flukes or claws, which is attached to a line and operated by hand.

Handline means a hand-held and operated line, with one or more hooks attached.

Harvest limit means the maximum legal take per person or designated group, per specified time period, in the area in which the person is fishing, even if part or all of the shellfish are preserved.

Household means a person or persons having the same residence.

Hydraulic clam digger means a device using water or a combination of air and water used to harvest clams.

Mechanical clam digger means a mechanical device used or capable of being used for the taking of clams.

Mile means a nautical mile when used in reference to marine waters or a statute mile when used in reference to fresh water.

Possession limit means the maximum number of shellfish a person or designated group may have in possession if the shellfish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15-day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Ring net means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

Scallop dredge means a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

Sea urchin rake means a hand-held implement, no longer than 4 feet, equipped with projecting prongs used to gather sea urchins.

Shovel means a hand-operated implement for digging clams.

Subsistence fishing permit means a permit issued by ADF&G, unless specifically identified otherwise.

To operate fishing gear means any of the following: to deploy gear in the water; to remove gear from the water; to remove fish or shellfish from the gear during an open season or period; or to possess a gillnet containing fish during an open fishing period, except that a gillnet which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish, and includes beam, otter, or pelagic trawl.

(c) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by this section.

(d) Methods, means, and general restrictions. (1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear to take shellfish:

(i) Abalone iron;
(ii) Diving gear;
(iii) A grappling hook;
(iv) A handline;
(v) A hydraulic clam digger;
(vi) A mechanical clam digger;
(vii) A pot;
(viii) A ring net;
(ix) A scallop dredge;
(x) A sea urchin rake;
(xi) A shovel; and
(xii) A trawl.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You shall plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, you may substitute for the keg or buoy, a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number;

(ii) kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in § _____.27.

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(e) Taking shellfish by designated harvest permit. (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified subsistence user to take shellfish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) You may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(f) If a subsistence shellfishing permit is required by this section, the following conditions apply unless otherwise specified by the subsistence regulations in this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit unless a different limit is specified in this section;

(2) You must obtain a permit prior to subsistence fishing;

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued;

(4) The permit may designate the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) If specified on the permit, you shall keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch, and such other information as may be required for management or conservation purposes;

(6) You must complete and submit subsistence fishing reports at the time specified for each particular area and fishery;

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(g) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(h) You may not take or possess shellfish smaller than the minimum legal size limits.

(i) Unlawful possession of subsistence shellfish. You may not possess, transport, give, receive, or barter shellfish or their parts taken in violation of Federal or State regulations.

(j)(1) An owner, operator, or employee of a lodge, charter vessel, or other enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this chapter, unless:

(i) The shellfish has been taken with gear deployed and retrieved by the client or guest who is a federally-qualified subsistence user;

(ii) The gear has been marked with the client's or guest's name and address; and

(iii) The shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crewmembers of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(k) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(2) *Prince William Sound Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(3) *Cook Inlet Area.* You may not take shellfish for subsistence purposes.

(4) *Kodiak Area.* (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only male Dungeness crabs with a shell width of 6½ inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is six crabs per household; only male king crab may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may not use more than five crab pots, each being no more than 75 cubic feet in capacity to take king crab;

(D) You may take king crab only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab;

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth

during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location;

(C) The daily harvest and possession limit is 12 male crab with a shell width 5½ inches or greater per person.

(5) *Alaska Peninsula-Aleutian Islands Area.* (i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crabs per person; only crabs with a shell width of 6½ inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1–January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(6) *Bering Sea Area.* (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots, and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Dungeness crabs per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., you may take crab only from June 1–January 31;

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Tanner crab.

Dated: December 19, 2000.

Kenneth E. Thompson,

Acting Regional Forester, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 01–1953 Filed 2–12–01; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

Federal Register

Tuesday,
February 13, 2001

Part IV

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2002 Subsistence Taking of Fish and Shellfish Regulations; Proposed Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AH77

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2002 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2002 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the fish and shellfish regulations included in the ''Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D–2001 Subsistence Taking of Fish and Wildlife Resources,'' which expire on February 28, 2002. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than March 30, 2001. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule from February 22, 2001—March 29, 2001. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

ADDRESSES: You may submit electronic comments and other data to *Bill_Knauer@fws.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council	Sitka	March 22, 2001.
Region 2—Southcentral Regional Council	Copper Center	March 20, 2001.
Region 3—Kodiak/Aleutians Regional Council	Old Harbor	March 6, 2001.
Region 4—Bristol Bay Regional Council	Dillingham	February 22, 2001.
Region 5—Yukon-Kuskokwim Delta Regional Council	Kotlik	March 14, 2001.
Region 6—Western Interior Regional Council	Fairbanks	March 8, 2001.
Region 7—Seward Peninsula Regional Council	Nome	March 29, 2001.
Region 8—Northwest Arctic Regional Council	Kotzebue	March 1, 2001.
Region 9—Eastern Interior Regional Council	Fairbanks	March 6, 2001.
Region 10—North Slope Regional Council	Barrow	March 13, 2001.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

Electronic filing of comments: You may submit electronic comments (proposals) and other data to *Bill_Knauer@fws.gov.* Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

We will compile and distribute for additional public review during early May 2001 the written proposals to change Subpart D fish and shellfish regulations and customary and traditional use determinations in Subpart C. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on June 6, 2001.

We will hold a second series of Regional Council meetings in September and October 2001, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change hunting and trapping and customary and traditional use determination regulations to the Regional Councils at those winter meetings.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, December 2001. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

Please Note: The Board will not consider proposals for changes relating to wildlife regulations at this time. The Board called for proposed changes to those regulations in August 2000 and will take final action on those proposals in May 2001.

The Board's review of your comments and fish and shellfish proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which your change is being suggested; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § _____.24, Subpart C, § _____.27, Subpart D, and § _____.28, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on

the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in McDowell v. State of Alaska that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in McDowell required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the McDowell decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1999) and 50 CFR 100.11 (1999), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in December 2001.

Proposed Changes From 2000–2001 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§ _____.24 of Subpart C) are also subject to an annual review process providing for modification each year. The text of the 2001–2002 Subparts C and D Final Rule, with no modifications, served as the foundation for the 2002–2003 Subparts C and D proposed rule. The regulations contained in this proposed rule will take effect on March 1, 2002, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992, and amended January 8, 1999, 64 FR 1276) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses

of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below were approved by OMB under 44 U.S.C. 3501 and were assigned clearance number 1018–0075, which expires July 31, 2003. The information collection requirements described below will be submitted to OMB for approval beyond that date, if needed. We will not conduct or sponsor, and you are not required to respond to, a collection of information request unless it displays a currently valid OMB control number.

The collection of information will be achieved through the use of the Federal Subsistence Harvest Permit Application. This collection of information will establish whether the applicant qualifies to participate in a Federal subsistence fishery on public lands in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy fish and shellfish populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 6,000, yielding a total annual reporting and recordkeeping burden of 1,500 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 222 ARLSQ, Washington, DC 20240. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B. We will submit for OMB approval any changes or additional information collection requirements not included in 1018–0075.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon and $ 0.58 per pound for other fish, would equate to about $34 million in food value Statewide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988 on Civil Justice Reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), 512 DM 2, and E.O. 13175, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Curt Wilson, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service, provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART __—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. In Subpart C of 36 CFR part 242 and 50 CFR part 100, § __.24(a)(2) is revised to read as follows:

§ _____.24 Customary and traditional use determinations.

(a) * * *

(2) *Fish determinations.*

Area	Species	Determination
Kotzebue Area	All fish	Residents of the Kotzebue Area.
Norton Sound-Port Clarence Area	All fish	Residents of the Norton Sound-Port Clarence Area
Yukon-Northern Area:		
Yukon River drainage	Salmon, other than Yukon River Fall Chum salmon.	Residents of the Yukon Area, including the community of Stebbins.
Yukon River drainage	Yukon River Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
Yukon River drainage	Freshwater fish species (other than salmon), including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon-Northern Area.
Remainder of the Yukon-Northern Area	All fish	Residents of the Northern Area, except for those domiciled in Unit 26–B.
Kuskokwim Area	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
	All other fish other than herring	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
Waters around Nunivak Island	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
Bristol Bay Area:		
Nushagak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichak District—Naknek River drainage	Salmon and other freshwater fish	Residents of the Naknek and Kvichak River drainages.
Naknek-Kvichak District—Iliamna-Lake Clark drainage.	Salmon and other freshwater fish	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Togiak District, freshwater drainage flowing into the district, and the community of Manokotak.
Togiak District	Herring spawn on kelp	Residents of the Togiak District.
Remainder of the Bristol Bay Area	All fish	Residents of the Bristol Bay Area.
Aleutian Islands Area	All fish	Residents of the Aleutian Islands Area and the Pribilof Islands.
Alaska Peninsula Area	Halibut	Residents of the Alaska Peninsula Area and the communities of Ivanof Bay and Perryville.
	All other fish in the Alaska Peninsula Area.	Residents of the Alaska Peninsula Area.
Chignik Area	Halibut, salmon and fish other than steelhead and rainbow trout.	Residents of the Chignik Area.
Kodiak Area—except the Mainland District, all waters along the south side of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) mid-stream Shelikof Strait, and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
Kodiak Area	Fish other than steelhead and rainbow trout and salmon.	Residents of the Kodiak Area.

Area	Species	Determination
Cook Inlet Area	Fish other than salmon, Dolly Varden, trout, char, grayling, and burbot.	Residents of the Cook Inlet Area.
Prince William Sound Area:		
South-Western District and Green Island	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
Chitina Subdistrict of the Upper Copper River District.	Salmon	Residents of Chitina, Cantwell, Chistochina, Copper Center, Gakona, Gulkana, Mentasta Lake, and Tazlina.
Glennallen Subdistrict of the Upper Copper River District.	Salmon	Residents of the Prince William Sound Area and residents of Healy Lake, Dot Lake, Northway, Tanacross, Tetlin, Tok and those individuals living along the Alaska Highway from the Alaskan/Canadian border to Dot Lake, along the Tok Cutoff from Tok to Mentasta Pass, and along the Nabesna Road.
Waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek, and in Tanada Creek between National Park Service regulatory markers identifying the open waters of the creek.	Salmon	Residents of Mentasta Lake and Dot Lake.
Prince William Sound Area—remainder	Salmon	Residents of the Prince William Sound Area.
Yakutat Area:		
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Remainder of the Yakutat Area	Dolly Varden, trout, smelt and eulachon.	Residents of Southeastern Alaska and Yakutat Areas.
Southeastern Alaska Area:		
District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Saxman.
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20′ W. long. and east of 132°25′ W. long.
District 3—Section 3–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the townsite of Hydaburg.
District 3—Section A	Halibut and bottomfish	Residents of Southeast Area.
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they existed in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they existed in January 1989.
District 3—Section 3–C in waters of Sarkar Lakes.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they existed in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they existed in January 1989.

Area	Species	Determination
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134″30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C	Salmon, Dolly Varden, trout, smelt and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
Southeastern Alaska Area—Remainder	Dolly Varden, trout, smelt and eulachon.	Residents of Southeastern Alaska and Yakutat Area.

* * * * *

Subpart D—Subsistence Taking of Fish and Wildlife

3. In Subpart D of 36 CFR part 242 and 50 CFR part 100 as amended elsewhere in this issue of the **Federal Register**, §§ _____.27 and _____.28 are proposed to be revised effective March 1, 2002, through February 28, 2003, to read as follows:

§ _____.27 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) You may take fish for subsistence uses at any time by any method unless you are restricted by the subsistence fishing regulations found in this section. The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional fish of that species under any other harvest limit specified for a State season.

(b) *Definitions.* The following definitions shall apply to all regulations contained in this section:

ADF&G means the Alaska Department of Fish and Game.

Anchor means a device used to hold a fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

Beach seine means a floating net which is designed to surround fish and is set from and hauled to the beach.

Cast net means a circular net with a mesh size of no more than 1½ inches and weights attached to the perimeter which, when thrown, surrounds the fish and closes at the bottom when retrieved.

Char means the following species: Arctic char (*Salvelinus alpinis*); lake trout (*Salvelinus namaycush*); brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

Depth of net means the perpendicular distance between cork line and lead line expressed as either linear units of measure or as a number of meshes, including all of the web of which the net is composed.

Dip net means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed 5 feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Drainage means all of the waters comprising a watershed, including tributary rivers, streams, sloughs, ponds, and lakes, which contribute to the water supply of the watershed.

Drift gillnet means a drifting gillnet that has not been intentionally staked,

anchored, or otherwise fixed in one place.

Fishwheel means a fixed, rotating device, with no more than four baskets on a single axle, for catching fish, which is driven by river current or other means.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn headland to headland across the mouth as the waters flow into the sea.

Fyke net means a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gillnet means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

Groundfish or *bottomfish* means any marine fish except halibut, osmerids, herring and salmonids.

Hand purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Handline means a hand-held and operated line, with one or more hooks attached.

Harvest limit means the maximum legal take per person or designated group, per specified time period, in the area in which the person is fishing, even if part or all of the fish are preserved. A fish, when landed and killed by means of rod and reel becomes part of the harvest limit of the person originally hooking it.

Herring pound means an enclosure used primarily to contain live herring over extended periods of time.

Household means a person or persons having the same residence.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Jigging gear means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice, or from shore ice and which are drawn through the water by hand.

Lead means either a length of net employed for guiding fish into a seine, set gillnet, or other length of net, or a length of fencing employed for guiding fish into a fishwheel, fyke net, or dip net.

Legal limit of fishing gear means the maximum aggregate of a single type of fishing gear permitted to be used by one individual or boat, or combination of boats in any particular regulatory area, district, or section.

Long line means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

Mechanical jigging machine means a mechanical device with line and hooks used to jig for halibut and bottomfish, but does not include hand gurdies or rods with reels.

Mile means a nautical mile when used in reference to marine waters or a statute mile when used in reference to fresh water.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15-day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Rockfish means all species of the genus *Sebastes.*

Rod and reel means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole. In either case, bait or an artificial fly or lure is used as terminal tackle. This definition does not include the use of rod and reel gear for snagging.

Salmon means the following species: pink salmon (*Oncorhynchus gorbuscha*); sockeye salmon (*Oncorhynchus nerka*); chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

Salmon stream means any stream used by salmon for spawning, rearing, or for traveling to a spawning or rearing area.

Set gillnet means a gillnet that has been intentionally set, staked, anchored, or otherwise fixed.

Spear means a shaft with a sharp point or fork-like implement attached to one end which is used to thrust through the water to impale or retrieve fish and which is operated by hand.

Stretched measure means the average length of any series of 10 consecutive meshes measured from inside the first knot and including the last knot when wet; the 10 meshes, when being measured, shall be an integral part of the net, as hung, and measured perpendicular to the selvages; measurements shall be made by means of a metal tape measure while the 10 meshes being measured are suspended vertically from a single peg or nail, under 5-pound weight.

Subsistence fishing permit means a permit issued by the Alaska Department of Fish and Game, unless specifically identified otherwise.

To operate fishing gear means any of the following: to deploy gear in the water; to remove gear from the water; to remove fish or shellfish from the gear during an open season or period; or to possess a gillnet containing fish during an open fishing period, except that a gillnet which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish, and includes beam, otter, or pelagic trawl.

Troll gear means a power gurdy troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water by a power gurdy; hand troll gear consisting of a line or lines with lures or baited hooks which are drawn through the water from a vessel by hand trolling, strip fishing, or other types of trolling, and which are retrieved by hand power or hand-powered crank and not by any type of electrical, hydraulic, mechanical, or other assisting device or attachment; or dinglebar troll gear consisting of one or more lines, retrieved and set with a troll gurdy or hand troll gurdy, with a terminally attached weight from which one or more leaders with one or more lures or baited hooks are pulled through the water while a vessel is making way.

Trout means the following species: cutthroat trout (*Oncorhynchus clarki*) and rainbow trout or steelhead trout (*Oncorhynchus mykiss*).

(c) *Methods, means, and general restrictions.* (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear for subsistence fishing:

(i) A set gillnet;
(ii) A drift gillnet;
(iii) A purse seine;
(iv) A hand purse seine;
(v) A beach seine;
(vi) Troll gear;
(vii) A fish wheel;
(viii) A trawl;
(ix) A pot;
(x) A longline;
(xi) A fyke net;

(xii) A lead;
(xiii) A herring pound;
(xiv) A dip net;
(xv) Jigging gear;
(xvi) A mechanical jigging machine;
(xvii) A handline;
(xviii) A cast net;
(xix) A rod and reel; and
(xx) A spear.

(2) You must include an escape mechanism on all pots used to take fish or shellfish. The escape mechanisms are as follows:

(i) A sidewall, which may include the tunnel, of all shellfish and bottomfish pots must contain an opening equal to or exceeding 18 inches in length, except that in shrimp pots the opening must be a minimum of 6 inches in length. The opening must be laced, sewn, or secured together by a single length of untreated, 100 percent cotton twine, no larger than 30 thread. The cotton twine may be knotted at each end only. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The cotton twine may not be tied or looped around the web bars. Dungeness crab pots may have the pot lid tie-down straps secured to the pot at one end by a single loop of untreated, 100 percent cotton twine no larger than 60 thread, or the pot lid must be secured so that, when the twine degrades, the lid will no longer be securely closed;

(ii) All king crab, Tanner crab, shrimp, miscellaneous shellfish and bottomfish pots may, instead of complying with paragraph (c)(2)(i) of this section, satisfy the following: a sidewall, which may include the tunnel, must contain an opening at least 18 inches in length, except that shrimp pots must contain an opening at least 6 inches in length. The opening must be laced, sewn, or secured together by a single length of treated or untreated twine, no larger than 36 thread. A galvanic timed release device, designed to release in no more than 30 days in salt water, must be integral to the length of twine so that, when the device releases, the twine will no longer secure or obstruct the opening of the pot. The twine may be knotted only at each end and at the attachment points on the galvanic timed release device. The opening must be within 6 inches of the bottom of the pot and must be parallel with it. The twine may not be tied or looped around the web bars.

(3) For subsistence fishing for salmon, you may not use a gillnet exceeding 50 fathoms in length, unless otherwise specified in this section. The gillnet web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Except as otherwise provided for in this section, you may not obstruct more than one-half the width of any stream with any gear used to take fish for subsistence uses.

(5) You may not use live non-indigenous fish as bait.

(6) You must have your first initial, last name, and address plainly and legibly inscribed on the side of your fishwheel facing midstream of the river.

(7) You may use kegs or buoys of any color but red on any permitted gear.

(8) You must have your first initial, last name, and address plainly and legibly inscribed on each keg, buoy, stakes attached to gillnets, stakes identifying gear fished under the ice, and any other unattended fishing gear which you use to take fish for subsistence uses.

(9) You may not use explosives or chemicals to take fish for subsistence uses.

(10) You may not take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Individuals, businesses, or organizations may not purchase subsistence-taken fish, their parts, or their eggs for use in, or resale to, a significant commercial enterprise.

(13) Individuals, businesses, or organizations may not receive through barter subsistence-taken fish, their parts or their eggs for use in, or resale to, a significant commercial enterprise.

(14) Except as provided elsewhere in this section, you may not take rainbow trout or steelhead trout.

(15) You may not use as bait for commercial or sport fishing purposes fish taken for subsistence use or under subsistence regulations in this part.

(16) You may not accumulate harvest limits authorized in this section or § _____.28 with harvest limits authorized under State regulations.

(17) Unless specified otherwise in this section, you may use a rod and reel to take fish without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) If you are required to obtain a subsistence fishing permit for an area, that permit is required to take fish for subsistence uses with rod and reel in that area. The harvest and possession limits for taking fish with a rod and reel in those areas are the same as indicated on the permit issued for subsistence fishing with other gear types;

(ii) Except as otherwise provided for in this section, if you are not required to obtain a subsistence fishing permit for an area, the harvest and possession limits for taking fish for subsistence uses with a rod and reel is the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(18) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish for subsistence uses at any time.

(19) You may not intentionally waste or destroy any subsistence-caught fish or shellfish; however, you may use for bait or other purposes, whitefish, herring, and species for which bag limits, seasons, or other regulatory methods and means are not provided in this section, as well as the head, tail, fins, and viscera of legally-taken subsistence fish.

(d) *Fishing by designated harvest permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user, you (beneficiary) may designate another Federally-qualified subsistence user to take fish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) The designated fisherman may not fish with more than one legal limit of gear.

(5) You may not designate more than one person to take or attempt to take fish on your behalf at one time. You may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on your behalf.

(e) *Fishing permits and reports.* (1) You may take salmon only under the authority of a subsistence fishing permit, unless a permit is specifically not required in a particular area by the subsistence regulations in this part, or unless you are retaining salmon from your commercial catch consistent with paragraph (f) of this section.

(2) The U.S. Fish and Wildlife Service, Office of Subsistence Management may issue a permit to harvest fish for a qualifying cultural/educational program to an organization that has been granted a Federal subsistence permit for a similar event within the previous 5 years. A qualifying program must have instructors, enrolled students, minimum attendance requirements, and standards for successful completion of the course. Applications must be submitted to the Office of Subsistence Management 60 days prior to the earliest desired date of harvest. Permits will be issued for no more than 25 fish per culture/education camp. Appeal of a rejected request can be made to the Federal Subsistence Board. Application for an initial permit for a qualifying cultural/educational program, for a permit when the circumstances have changed significantly, when no permit has been issued within the previous 5 years, or when there is a request for harvest in excess of that provided in this paragraph (e)(2), will be considered by the Federal Subsistence Board.

(3) If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(i) You may not take more fish for subsistence use than the limits set out in the permit;

(ii) You must obtain the permit prior to fishing;

(iii) You must have the permit in your possession and readily available for inspection while fishing or transporting subsistence-taken fish;

(iv) If specified on the permit, you shall keep accurate daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(v) If the return of catch information necessary for management and conservation purposes is required by a fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(f) *Relation to commercial fishing activities.* (1) If you are a Federally-qualified subsistence user who also commercial fishes, you may retain fish for subsistence purposes from your lawfully-taken commercial catch.

(2) When participating in a commercial and subsistence fishery at the same time, you may not use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) You may not possess, transport, give, receive, or barter subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) [Reserved]

(i) *Fishery management area restrictions.* (1) *Kotzebue Area.* The Kotzebue Area includes all waters of Alaska between the latitude of the westernmost tip of Point Hope and the latitude of the westernmost tip of Cape Prince of Wales, including those waters draining into the Chukchi Sea.

(i) You may take fish for subsistence purposes without a permit.

(ii) You may take salmon only by gillnets, beach seines, or a rod and reel.

(iii) In the Kotzebue District, you may take sheefish with gillnets that are not more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a mesh size larger than 7 inches.

(iv) You may not obstruct more than one-half the width of a stream with any gear used to take fish for subsistence uses, except from May 15 to June 30 and August 15 to October 31 when taking whitefish or pike in steams, creeks, or sloughs within the Selawik and Kobuk River drainages. Only gillnets 60 feet or less in length with a mesh size from 2½ to 4½ inches may be used. You must check your net at least once in every 24-hour period.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Canal Point light, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) In the Port Clarence District, you may take fish at any time except as specified by emergency regulation.

(ii) In the Norton Sound District, you may take fish at any time except as follows:

(A) In Subdistricts 2 through 6, if you are a commercial fishermen, you may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season, except that from July 15 through August 1, you may take salmon for subsistence purposes 7 days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, you may take salmon only from 8:00 a.m. Monday until 8:00 p.m. Saturday;

(C) In Subdistricts 1–3, you may take salmon other than chum salmon by beach seine during periods established by emergency regulations.

(iii) You may take salmon only by gillnets, beach seines, fishwheel, or a rod and reel.

(iv) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, jigging gear, spear, lead, or a rod and reel.

(v) In the Unalakleet River from June 1 through July 15, you may not operate more than 25 fathoms of gillnet in the aggregate nor may you operate an unanchored fishing net.

(vi) You may take fish for subsistence purposes without a subsistence fishing permit except that a subsistence fishing permit is required in the Norton Sound District for net fishing in all waters from Cape Douglas to Rocky Point.

(vii) Only one subsistence fishing permit will be issued to each household per year.

(3) *Yukon-Northern Area.* The Yukon-Northern Area includes all waters of Alaska between the latitude of Canal Point Light and the latitude of the westernmost point of the Naskonat Peninsula, including those waters draining into the Bering Sea, and all waters of Alaska north of the latitude of the westernmost tip of Point Hope and west of 141° W. long., including those waters draining into the Arctic Ocean and the Chukchi Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Yukon-Northern Area at any time.

(ii) In the following locations, you may take salmon only during the open weekly fishing periods of the commercial salmon fishing season and may not take them for 24 hours before the opening of the commercial salmon fishing season:

(A) In District 4, excluding the Koyukuk River drainage;

(B) In Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) In District 6, excluding the Kantishna River drainage, salmon may be taken from 6:00 p.m. Friday until 6:00 p.m. Wednesday.

(iii) During any commercial salmon fishing season closure of greater than five days in duration, you may not take salmon during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk River drainage, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In District 5, excluding the Tozitna River drainage and Subdistrict 5–D, salmon may not be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday.

(iv) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, you may take fish other than salmon at any time.

(v) In Districts 1, 2, 3, and Subdistrict 4–A, excluding the Koyukuk and Innoko River drainages, you may not take salmon for subsistence purposes during the 24 hours immediately before the opening of the commercial salmon fishing season.

(vi) In Districts 1, 2, and 3:

(A) After the opening of the commercial salmon fishing season through July 15, you may not take salmon for subsistence for 18 hours immediately before, during, and for 12 hours after each commercial salmon fishing period;

(B) After July 15, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each commercial salmon fishing period.

(vii) In Subdistrict 4–A after the opening of the commercial salmon fishing season, you may not take salmon for subsistence for 12 hours immediately before, during, and for 12 hours after each commercial salmon fishing period; however, you may take king salmon during the commercial fishing season, with drift gillnet gear only, from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(viii) In the upper Yukon River drainage, you may not subsistence fish, except for whitefish and suckers, in Birch Creek and waters within 500 feet of its mouth.

(ix) You may not subsistence fish in the following drainages located north of the main Yukon River:

(A) Kanuti River upstream from a point 5 miles downstream of the State highway crossing;

(B) Bonanza Creek;

(C) Jim River including Prospect and Douglas Creeks; and

(D) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(x) You may not subsistence fish in the Delta River.

(xi) You may not subsistence fish in the following rivers and creeks and within 500 feet of their mouths: Big Salt River, Hess Creek, and Beaver Creek.

(xii) You may not subsistence fish in the Deadman, Jan, Fielding, and Two-Mile Lakes.

(xiii) You may not subsistence fish in the Toklat River drainage from August 15 through May 15.

(xiv) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel, subject to the restrictions set forth in this section.

(xv) In District 4, if you are a commercial fisherman, you may not take salmon for subsistence purposes during the commercial salmon fishing season using gillnets with mesh larger than six-inches after a date specified by ADF&G emergency order issued between July 10 and July 31.

(xvi) In Districts 4, 5, and 6, you may not take salmon for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4–A upstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14, and chum salmon by drift gillnets after August 2;

(B) In Subdistrict 4–A downstream from the mouth of Stink Creek, you may take king salmon by drift gillnets less than 150 feet in length from June 10 through July 14.

(xvii) Unless otherwise specified in this section, you may take fish other than salmon and halibut by set gillnet, drift gillnet, beach seine, fish wheel, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel, subject to the following restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, if you are a commercial fisherman, you may not operate more than one type of gear at a time, for commercial, personal use, and subsistence purposes;

(B) You may not use an aggregate length of set gillnet in excess of 150 fathoms and each drift gillnet may not exceed 50 fathoms in length;

(C) In Districts 4, 5, and 6, you may not set subsistence fishing gear within 200 feet of other operating commercial, personal use, or subsistence fishing gear except that, at the site approximately 1 mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the ''Slide,'' you may set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear and in District 4, from Old Paradise Village upstream to a point 4 miles upstream from Anvik, there is no minimum distance requirement between fish wheels;

(D) During the commercial salmon fishing season, within the Yukon River and the Tanana River below the confluence of the Wood River, you may use drift gillnets and fish wheels only during open subsistence salmon fishing periods.

(xviii) In District 4, from September 21 through May 15, you may use jigging gear from shore ice.

(xix) You must possess a subsistence fishing permit for the following locations:

(A) For the Yukon River drainage from the mouth of Hess Creek to the mouth of the Dall River;

(B) For the Yukon River drainage from the upstream mouth of 22 Mile Slough to the U.S.-Canada border;

(C) For whitefish and suckers in Birch Creek upstream from the Steese Highway bridge at Mile 140;

(D) Only for salmon in the Tanana River drainage above the mouth of the Wood River.

(xx) Only one subsistence fishing permit will be issued to each household per year.

(xxi) In Districts 1, 2, and 3, you may not possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xxii) In the Yukon River drainage, chinook (king) salmon are to be used primarily for human consumption and not specifically targeted for dog food, except that whole fish unfit for human consumption (due to disease, deterioration, deformities), scraps, and small fish (jack kings 16 inches or less) may be fed to dogs.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, you may take fish in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, you may not take salmon for 16 hours before, during, and

for 6 hours after, each open commercial salmon fishing period for District 1.

(iii) In District 1, Kuskokuak Slough only from June 1 through July 31, you may not take salmon for 16 hours before and during each open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, you may not take salmon for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 you may not take salmon for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in the district.

(vi) You may not take subsistence fish by nets in the Goodnews River east of a line between ADF&G regulatory markers placed near the mouth of the Ufigag River and an ADF&G regulatory marker placed near the mouth of the Tunulik River 16 hours before, during, and 6 hours after each open commercial salmon fishing period.

(vii) You may not take subsistence fish by nets in the Kanektok River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each open commercial salmon fishing period.

(viii) You may not take subsistence fish by nets in the Arolik River upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and 6 hours after each open commercial salmon fishing period.

(ix) You may take salmon only by gillnet, beach seine, fish wheel, or rod and reel subject to the restrictions set out in this section, except that you may also take salmon by spear in the Holitna, Kanektok, and Arolik River drainages, and in the drainage of Goodnews Bay.

(x) You may not use an aggregate length of set gillnets or drift gillnets in excess of 50 fathoms for taking salmon.

(xi) You may take fish other than salmon by set gillnet, drift gillnet, beach seine, fish wheel, pot, long line, fyke net, dip net, jigging gear, spear, lead, or rod and reel.

(xii) You must attach to the bank each subsistence gillnet operated in tributaries of the Kuskokwim River and fish it substantially perpendicular to the bank and in a substantially straight line.

(xiii) Within a tributary to the Kuskokwim River in that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, you may not set or operate any part of a set gillnet within 150 feet of any part of another set gillnet.

(xiv) The maximum depth of gillnets is as follows:

(A) Gillnets with 6-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than 6-inch mesh may not be more than 35 meshes in depth.

(xv) You may take halibut only by a single hand-held line with no more than two hooks attached to it.

(xvi) You may not use subsistence set and drift gillnets exceeding 15 fathoms in length in Whitefish Lake in the Ophir Creek drainage. You may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. You must check the net at least once every 24 hours.

(xvii) Rainbow trout may be taken by only residents of Goodnews Bay, Platinum, Quinhagak, Eek, Kwethluk, Akiachak, and Akiak. The following restrictions apply:

(A) You may take rainbow trout only by the use of gillnets, dip nets, fyke nets, handline, spear, rod and reel, or jigging through the ice;

(B) You may not use gillnets, dip nets, or fyke nets for targeting rainbow trout from March 15–June 15;

(C) If you take rainbow trout incidentally in other subsistence net fisheries and through the ice, you may retain them for subsistence purposes;

(D) There are no harvest limits with handline, spear, rod and reel, or jigging.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, you may take fish at any time in the Bristol Bay area.

(ii) In all commercial salmon districts, from May 1 through May 31 and October 1 through October 31, you may subsistence fish for salmon only from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, you may take salmon only during open commercial salmon fishing periods.

(iii) In the Egegik River from 9:00 a.m. June 23 through 9:00 a.m. July 17, you may take salmon only from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(iv) You may not take fish from waters within 300 feet of a stream mouth used by salmon.

(v) You may not subsistence fish with nets in the Tazimina River and within one-fourth mile of the terminus of those waters during the period from September 1 through June 14.

(vi) Within any district, you may take salmon, herring, and capelin only by drift and set gillnets.

(vii) Outside the boundaries of any district, you may take salmon only by set gillnet, except that you may also take salmon as follows:

(A) By spear in the Togiak River excluding its tributaries;

(B) From August 30 through September 30, by spear, dip net, and gillnet along a 100 yard length of the west shore of Naknek Lake near the outlet to the Naknek River as marked by ADF&G regulatory markers;

(C) From August 15 through September 15, by spear, dip net, and gillnet at Johnny's Lake on the northwestern side of Naknek Lake;

(D) From October 1 through November 15, by spear, dip net, and gillnet at the mouth of Brooks River at Naknek Lake;

(E) At locations and times specified in paragraphs (i)(5)(vii) (B) through (D) of this section, gillnets may not exceed 5 fathoms in length and may not be anchored or tied to a stake or peg, and you must be present at the net while fishing the net.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) You may not use set gillnets exceeding 10 fathoms in length in the Egegik, River;

(B) In the remaining waters of the area, you may not use set gillnets exceeding 25 fathoms in length.

(ix) You may not operate any part of a set gillnet within 300 feet of any part of another set gillnet.

(x) You must stake and buoy each set gillnet. Instead of having the identifying information on a keg or buoy attached to the gillnet, you may plainly and legibly inscribe your first initial, last name, and subsistence permit number on a sign at or near the set gillnet.

(xi) You may not operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xii) During closed commercial herring fishing periods, you may not use gillnets exceeding 25 fathoms in length for the subsistence taking of herring or capelin.

(xiii) You may take fish other than salmon, herring, capelin, and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(xiv) You may take salmon and char only under authority of a subsistence fishing permit.

(xv) Only one subsistence fishing permit may be issued to each household per year.

(xvi) In the Togiak River section and the Togiak River drainage, you may not possess coho salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) or the dorsal fin have been removed.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54° 36′ North latitude.

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) In the Unalaska District, you may take salmon for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except:

(A) That from June 1 through September 15, you may not use a salmon seine vessel to take salmon for subsistence 24 hours before, during, or 24 hours after an open commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing;

(B) That from June 1 through September 15, you may use a purse seine vessel to take salmon only with a gillnet and you may not have any other type of salmon gear on board the vessel while subsistence fishing; or

(C) As may be specified on a subsistence fishing permit.

(iii) In the Adak, Akutan, Atka-Amlia, and Umnak Districts, you may take salmon at any time.

(iv) You may not subsistence fish for salmon in the following waters:

(A) The waters of Unalaska Lake, its tributaries and outlet stream;

(B) The waters between Unalaska and Amaknak Islands, including Margaret's Bay, west of a line from the ''Bishop's House'' at 53° 52.64′ N. lat., 166° 32.30′ W. long. to a point on Amaknak Island at 53° 52.82′ N. lat., 166° 32.13′ W. long., and north of line from a point south of Agnes Beach at 53° 52.28′ N. lat., 166° 32.68′ W. long. to a point at 53° 52.35′ N. lat., 166° 32.95′ W. long. on Amaknak Island;

(C) Within Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point, waters within 250 yards of any anadromous stream, except the outlet stream of Unalaska Lake, which is closed under paragraph (i)(6)(iv)(A) of this section;

(D) The waters of Summers and Morris Lakes and their tributaries and outlet streams;

(E) All streams supporting anadromous fish runs that flow into Unalaska Bay south of a line from the northern tip of Cape Cheerful to the northern tip of Kalekta Point;

(F) Waters of McLees Lake and its tributaries and outlet stream;

(G) Waters in Reese Bay from July 1 through July 9, within 500 yards of the outlet stream terminus to McLees Lake;

(H) All freshwater on Adak Island and Kagalaska Island in the Adak District.

(v) You may take salmon by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vi) In the Unalaska District, if you fish with a net, you must be physically present at the net at all times when the net is being used.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon, trout, and char only under the terms of a subsistence fishing permit, except that you do not need a permit in the Akutan, Umnak, and Atka-Amlia Islands Districts.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit, except that in the Unalaska and Adak Districts, you may take no more than 25 salmon plus an additional 25 salmon for each member of your household listed on the permit. You may obtain an additional permit.

(x) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(xi) The daily bag limit for halibut is two fish, and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the longitude of the tip of Cape Sarichef and south of the latitude of the tip of Cape Menshikof.

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted under the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may take salmon, trout, and char only under the authority of a subsistence fishing permit.

(iii) You must keep a record on the reverse side of the permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(iv) You may take salmon at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) You may not subsistence fish for salmon in the following waters:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth.

(vi) You may take salmon by seine, gillnet, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may not use a set gillnet exceeding 100 fathoms in length.

(ix) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(x) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on your subsistence fishing permit.

(xi) The daily bag limit for halibut is two fish and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156°20.22′ West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) You may take fish, other than rainbow trout and steelhead trout, at any time, except as may be specified by a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may not take salmon in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) You may take salmon, trout and, char only under the authority of a subsistence fishing permit.

(iv) You must keep a record on your permit of subsistence-caught fish. You must complete the record immediately upon taking subsistence-caught fish and must return it no later than October 31.

(v) If you hold a commercial fishing license, you may not subsistence fish for salmon from 48 hours before the first commercial salmon fishing opening in the Chignik Area through September 30.

(vi) You may take salmon by seines, gillnets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake you may not use purse seines.

(vii) You may take fish other than salmon by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take halibut for subsistence purposes only by a single handheld line with no more than two hooks attached.

(ix) You may take no more than 250 salmon for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(x) The daily bag limit for halibut is two fish, and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58°51.10′ N. lat.), west of 150° W. long., north of 55°30.00′ N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156°20.22′ W. long.).

(i) You may take fish, other than salmon, rainbow trout, and steelhead trout, at any time unless restricted by the terms of a subsistence fishing permit. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(ii) You may take salmon for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, you may not use salmon seine vessels to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period. The use of skiffs from any type of vessel is allowed;

(B) From June 1 through September 15, you may use purse seine vessels to take salmon only with gillnets, and you may have no other type of salmon gear on board the vessel.

(iii) You may not subsistence fish for salmon in the following locations:

(A) Womens Bay closed waters—all waters inside a line from the tip of the Nyman Peninsula (57°43.23′ N. lat., 152°31.51′ W long.), to the northeastern tip of Mary's Island (57°42.40′ N. lat., 152°32.00′ W. long.), to the southeastern shore of Womens Bay at 57°41.95′ N. lat., 152°31.50′ W. long.;

(B) Buskin River closed waters—all waters inside of a line running from a marker on the bluff north of the mouth of the Buskin River at approximately 57°45.80′ N. lat, 152°28.38′ W. long., to a point offshore at 57°45.35′ N. lat, 152°28.15′ W. long., to a marker located onshore south of the river mouth at approximately 57°45.15′ N. lat., 152°28.65′ W. long.;

(C) All waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek;

(D) In Afognak Bay north and west of a line from the tip of Last Point to the tip of River Mouth Point;

(E) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(F) All freshwater systems of Afognak Island.

(iv) You must have a subsistence fishing permit for taking salmon, trout, and char for subsistence purposes. You must have a subsistence fishing permit for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from April 15 through June 30.

(v) With a subsistence salmon fishing permit you may take 25 salmon plus an additional 25 salmon for each member of your household whose names are listed on the permit. You may obtain an additional permit if you can show that more fish are needed.

(vi) You must record on your subsistence permit the number of subsistence fish taken. You must complete the record immediately upon landing subsistence-caught fish, and must return it by February 1 of the year following the year the permit was issued.

(vii) You may take fish other than salmon and halibut by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) You may take salmon only by gillnet, rod and reel, or seine.

(ix) You must be physically present at the net when the net is being fished.

(x) You may take halibut only by a single hand-held line with not more than two hooks attached to it.

(xi) The daily bag limit for halibut is two fish, and the possession limit is two daily bag limits. You may not possess sport-taken and subsistence-taken halibut on the same day.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58°51′06'' N. lat.) and a line extending south from Cape Fairfield (148°50′15'' W. long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, at any time in the Cook Inlet Area. If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries or through the ice, you may retain them for subsistence purposes.

(ii) You may not take salmon, Dolly Varden, trout, grayling, char, and burbot for subsistence purposes.

(iii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit (as may be modified by this section).

(iv) You may only take smelt with dip nets or gillnets in fresh water from April 1 through June 15. You may not use a gillnet exceeding 20 feet in length and 2 inches in mesh size. You must attend the net at all times when it is being used. There are no harvest or possession limits for smelt.

(v) Gillnets may not be used in freshwater, except for the taking of whitefish in the Tyone River drainage or for the taking of smelt.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, at any time in the Prince William Sound Area.

(ii) You may take salmon in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from May 15 through September 30;

(B) You may not take salmon in the Chitina Subdistrict.

(iii) You may take salmon in the vicinity of the former Native village of Batzulnetas only under the authority of a Batzulnetas subsistence salmon fishing permit available from the National Park Service under the following conditions:

(A) You may take salmon only in those waters of the Copper River between National Park Service regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between National Park

Service regulatory markers identifying the open waters of the creek;

(B) You may use only fish wheels, dip nets, and rod and reel on the Copper River and only dip nets, spears, and rod and reel in Tanada Creek;

(C) You may take salmon only from May 15 through September 30 or until the season is closed by special action;

(D) You may retain chinook salmon taken in a fishwheel in the Copper River. You may not take chinook salmon in Tanada Creek;

(E) You must return the permit to the National Park Service no later than October 15.

(iv) You may take salmon for subsistence purposes with no bag or possession limits in those waters of the Southwestern District and along the northwestern shore of Green Island from the westernmost tip of the island to the northernmost tip, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of 4 inches, or gillnets up to 150 fathoms in length, except that you may take pink salmon only in fresh water using dip nets;

(B) You may take salmon only from May 15 until 2 days before the commercial opening of the Southwestern District, 7 days per week; during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from 2 days following the closure of the commercial salmon season until September 30, 7 days per week;

(C) You may not fish within the closed waters areas for commercial salmon fisheries.

(v) You may take salmon for subsistence purposes with no bag or possession limits in those waters north of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point, only as follows:

(A) You may use seines up to 50 fathoms in length and 100 meshes deep with a maximum mesh size of 4 inches, or gillnets up to 150 fathoms in length with a maximum mesh size of 6¼ inches, except that you may only take pink salmon in fresh water using dip nets;

(B) You may take salmon only from May 15 until 2 days before the commercial opening of the Eastern District, 7 days per week during the commercial salmon fishing season, only during open commercial salmon fishing periods; and from 2 days following the closure of the commercial salmon season until October 31, 7 days per week;

(C) You may not fish within the closed waters areas for commercial salmon fisheries.

(vi) If you take rainbow trout and steelhead trout incidentally in other subsistence net fisheries, you may retain them for subsistence purposes.

(vii) You may only take salmon in the waters of the Upper Copper River District, or in the vicinity of the Native Village of Batzulnetas.

(viii) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(ix) In the Glennallen Subdistrict, you may take salmon only by fish wheels, rod and reel, or dip nets.

(x) You may not rent, lease, or otherwise use your fish wheel used for subsistence fishing for personal gain. You must register your fish wheel with ADF&G. Your registration number and name and address must be permanently affixed and plainly visible on the fish wheel when the fish wheel is in the water; only the current year's registration number may be affixed to the fish wheel; you must remove any other registration number from the fish wheel. You must remove the fish wheel from the water at the end of the permit period. You may operate only one fish wheel at any one time. You may not set or operate a fish wheel within 75 feet of another fish wheel. No fish wheel may have more than two baskets. A wood or metal plate at least 12 inches high by 12 inches wide, bearing your name and address in letters and numerals at least 1 inch high, must be attached to each fish wheel so that the name and address are plainly visible.

(xi) You must personally operate the fish wheel or dip net. You may not loan or transfer a subsistence fish wheel or dip net permit except as permitted.

(xii) Except as provided in this section, you may take fish other than salmon and freshwater fish species for subsistence purposes without a subsistence fishing permit.

(xiii) You may take salmon and freshwater fish species only under authority of a subsistence fishing permit.

(xiv) Only one subsistence fishing permit will be issued to each household per year.

(xv) The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) You must return your permit no later than October 31, or you may be denied a permit for the following year;

(C) A fish wheel may be operated only by one permit holder at one time; that permit holder must have the fish wheel marked as required by this section and during fishing operations;

(D) Only the permit holder and the authorized member of the household listed on the subsistence permit may take salmon;

(E) A permit holder must record on ADF&G forms all salmon taken immediately after landing the salmon.

(xvi) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(A) For a household with 1 person, 30 salmon, of which no more than 5 may be chinook salmon if taken by dip net;

(B) For a household with 2 persons, 60 salmon, of which no more than 5 may be chinook salmon if taken by dip net; plus 10 salmon for each additional person in a household over 2 persons, except that the household's limit for chinook salmon taken by dip net does not increase;

(C) Upon request, permits for additional salmon will be issued for no more than a total of 200 salmon for a permit issued to a household with 1 person, of which no more than 5 may be chinook salmon if taken by dip net; or no more than a total of 500 salmon for a permit issued to a household with 2 or more persons, of which no more than 5 may be chinook salmon if taken by dip net.

(xvii) A subsistence fishing permit may be issued to a village council, or other similarly qualified organization whose members operate fish wheels for subsistence purposes in the Upper Copper River District, to operate fish wheels on behalf of members of its village or organization. A permit may only be issued following approval by ADF&G of a harvest assessment plan to be administered by the permitted council or organization. The harvest assessment plan must include: provisions for recording daily catches for each fish wheel; sample data collection forms; location and number of fish wheels; the full legal name of the individual responsible for the lawful operation of each fish wheel; and other information determined to be necessary for effective resource management. The following additional provisions apply to subsistence fishing permits issued under this paragraph (i)(11)(xvii):

(A) The permit will list all households and household members for whom the fish wheel is being operated;

(B) The allowable harvest may not exceed the combined seasonal limits for the households listed on the permit; the permittee will notify the department when households are added to the list,

and the seasonal limit may be adjusted accordingly;

(C) Members of households listed on a permit issued to a village council or other similarly qualified organization, are not eligible for a separate household subsistence fishing permit for the Upper Copper River District.

(xviii) You may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless both lobes of the caudal (tail) fin have been immediately removed from the salmon.

(xix) In locations open to commercial salmon fishing other than described for the Upper Copper River District, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of 1 person;

(B) 30 salmon for a household of 2 persons and 10 salmon for each additional person in a household;

(C) No more than five king salmon may be taken per permit.

(12) *Yakutat Area.* The Yakutat Area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, you may take fish at any time in the Yakutat Area.

(ii) You may not take salmon during the period commencing 48 hours before an opening of commercial salmon net fishing season until 48 hours after the closure. This applies to each river or bay fishery individually.

(iii) When the length of the weekly commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery, the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) You may take salmon, trout (other than steelhead,) and char only under authority of a subsistence fishing permit. You may only take steelhead trout in the Situk and Ahrnklin Rivers and only under authority of a subsistence fishing permit.

(v) If you take salmon, trout, or char incidentally by gear operated under the terms of a subsistence permit for salmon, you may retain them for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vi) You may take fish by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(vii) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(viii) You may block up to two-thirds of a stream with a gillnet or seine used for subsistence fishing.

(ix) You must remove the dorsal fin from subsistence-caught salmon when taken.

(x) You may not possess subsistence-taken and sport-taken salmon on the same day.

(xi) With a subsistence fishing permit, you may harvest at any time up to 10 Dolly Varden with no minimum size.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, you may take fish, other than rainbow trout and steelhead trout, in the Southeastern Alaska Area at any time.

(ii) From July 7 through July 31, you may take sockeye salmon in the waters of the Klawock River and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

(iii) You must possess a subsistence fishing permit to take salmon, trout, or char.

(iv) You may take steelhead trout on Prince of Wales Island only under the terms of a Federal subsistence fishing permit. The annual harvest limit is two fish, 36 inches or larger. You may use only a dip net or rod and reel with artificial lure or fly. You may not use bait.

(v) You may take coho salmon in Subdistricts 3(A), (B), and (C) only under the terms of a Federal subsistence fishing permit. There is no closed season. The daily harvest limit is 20 fish per household. Only spears, dip net, and rod and reel may be used. Bait may be used only from September 15 through November 15.

(vi) If you take salmon, trout, or char incidentally with gear operated under terms of a subsistence permit for other salmon, they may be kept for subsistence purposes. You must report any salmon, trout, or char taken in this manner on your permit calendar.

(vii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems within the city limits of Petersburg, Wrangell, and Sitka.

(viii) You shall immediately remove the pelvic fins of all salmon when taken.

(ix) You may not possess subsistence-taken and sport-taken salmon on the same day.

(x) For the Salmon Bay Lake system, the daily harvest and season limit per household is 30 sockeye salmon.

(xi) For Virginia Lake (Mill Creek), the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xii) For Thoms Creek, the daily harvest limit per household is 20 sockeye salmon, and the season limit per household is 40 sockeye salmon.

(xiii) The Sarkar River system above the bridge is closed to the use of all nets by both Federally-qualified and non-Federally qualified users.

(xiv) Only Federally-qualified subsistence users may harvest sockeye salmon in streams draining into Falls Lake, Gut Bay, or Pillar Bay. In the Falls Lake and Gut Bay drainages, the possession limit is 10 sockeye salmon per household. In the Pillar Bay drainage, the individual possession limit is 15 sockeye salmon with a household possession limit of 25 sockeye salmon.

(xv) In Baranof Lake, Florence Lake, Hasselborg Lake and River, Mirror Lake, Virginia Lake, and Wilson Lake, in addition to the requirement for a subsistence fishing permit, the following restrictions for the harvest of Dolly Varden, cutthroat, and rainbow trout apply:

(A) You may harvest at any time up to 10 Dolly Varden of any size;

(B) You may harvest at any time six cutthroat or rainbow trout in combination. You may only retain fish between 11″ and 22″. You may only use a rod and reel without bait.

(xvi) In all waters, other than those identified in paragraph (i)(13)(xv) of this section, in addition to the requirement for a subsistence fishing permit, you may harvest at any time: Dolly Varden of any size with a daily possession limit of 10 fish; cutthroat and rainbow trout with a slot size limit of 11″ to 22″ with a daily possession limit of 2 fish in combination. You may only use a rod and reel without bait.

§ _____.28 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of Dungeness crab, king crab, Tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) *Definitions.* The following definitions shall apply to all regulations contained in this section:

Abalone iron means a flat device which is used for taking abalone and which is more than 1 inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

ADF&G means the Alaska Department of Fish and Game.

Crab means the following species: red king crab (*Paralithodes camshatica*);

blue king crab (*Paralithodes platypus*); brown king crab (*Lithodes aequispina*); *Lithodes couesi*; all species of tanner or snow crab (*Chionoecetes* spp.); and Dungeness crab (*Cancer magister*).

Diving gear means any type of hard hat or skin diving equipment, including SCUBA equipment; a tethered, umbilical, surface-supplied unit; or snorkel.

Gear means any type of fishing apparatus.

Grappling hook means a hooked device with flukes or claws, which is attached to a line and operated by hand.

Handline means a hand-held and operated line, with one or more hooks attached.

Harvest limit means the maximum legal take per person or designated group, per specified time period, in the area in which the person is fishing, even if part or all of the shellfish are preserved.

Household means a person or persons having the same residence.

Hydraulic clam digger means a device using water or a combination of air and water used to harvest clams.

Mechanical clam digger means a mechanical device used or capable of being used for the taking of clams.

Mile means a nautical mile when used in reference to marine waters or a statute mile when used in reference to fresh water.

Possession limit means the maximum number of shellfish a person or designated group may have in possession if the shellfish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15-day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Ring net means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

Scallop dredge means a dredge-like device designed specifically for and capable of taking scallops by being towed along the ocean floor.

Sea urchin rake means a hand-held implement, no longer than 4 feet, equipped with projecting prongs used to gather sea urchins.

Shovel means a hand-operated implement for digging clams.

Subsistence fishing permit means a permit issued by ADF&G, unless specifically identified otherwise.

To operate fishing gear means any of the following: to deploy gear in the water; to remove gear from the water; to remove fish or shellfish from the gear during an open season or period; or to possess a gillnet containing fish during an open fishing period, except that a gillnet which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish, and includes beam, otter, or pelagic trawl.

(c) You may take shellfish for subsistence uses at any time in any area of the public lands by any method unless restricted by this section.

(d) Methods, means, and general restrictions. (1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that if you have taken the harvest limit for a particular species under a subsistence season specified in this section, you may not, after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section or under terms of a required subsistence fishing permit (as may be modified by this section), you may use the following legal types of gear to take shellfish:

(i) Abalone iron;
(ii) Diving gear;
(iii) A grappling hook;
(iv) A handline;
(v) A hydraulic clam digger;
(vi) A mechanical clam digger;
(vii) A pot;
(viii) A ring net;
(ix) A scallop dredge;
(x) A sea urchin rake;
(xi) A shovel; and
(xii) A trawl.

(3) You are prohibited from buying or selling subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) You may not use explosives and chemicals, except that you may use chemical baits or lures to attract shellfish.

(5) Marking requirements for subsistence shellfish gear are as follows:

(i) You shall plainly and legibly inscribe your first initial, last name, and address on a keg or buoy attached to unattended subsistence fishing gear, except when fishing through the ice, you may substitute for the keg or buoy, a stake inscribed with your first initial, last name, and address inserted in the ice near the hole; subsistence fishing gear may not display a permanent ADF&G vessel license number;

(ii) kegs or buoys attached to subsistence crab pots also must be inscribed with the name or United States Coast Guard number of the vessel used to operate the pots.

(6) Pots used for subsistence fishing must comply with the escape mechanism requirements found in § _____.27.

(7) You may not mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(e) Taking shellfish by designated harvest permit. (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) If you are a Federally-qualified subsistence user (beneficiary), you may designate another Federally-qualified subsistence user to take shellfish on your behalf. The designated fisherman must obtain a designated harvest permit prior to attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of beneficiaries but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated harvest permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) You may not fish with more than one legal limit of gear as established by this section.

(5) You may not designate more than one person to take or attempt to take shellfish on your behalf at one time. You may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on your behalf.

(f) If a subsistence shellfishing permit is required by this section, the following conditions apply unless otherwise specified by the subsistence regulations in this section:

(1) You may not take shellfish for subsistence in excess of the limits set out in the permit unless a different limit is specified in this section;

(2) You must obtain a permit prior to subsistence fishing;

(3) You must have the permit in your possession and readily available for inspection while taking or transporting the species for which the permit is issued;

(4) The permit may designate the species and numbers of shellfish to be harvested, time and area of fishing, the type and amount of fishing gear and other conditions necessary for management or conservation purposes;

(5) If specified on the permit, you shall keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch, and such other information as may be required for management or conservation purposes;

(6) You must complete and submit subsistence fishing reports at the time specified for each particular area and fishery;

(7) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit and you fail to comply with such reporting requirements, you are ineligible to receive a subsistence permit for that activity during the following calendar year, unless you demonstrate that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(g) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, Tanner crab, or Dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, if you are a commercial fisherman, you may retain shellfish for your own use from your lawfully taken commercial catch.

(h) You may not take or possess shellfish smaller than the minimum legal size limits.

(i) Unlawful possession of subsistence shellfish. You may not possess, transport, give, receive, or barter shellfish or their parts taken in violation of Federal or State regulations.

(j) (1) An owner, operator, or employee of a lodge, charter vessel, or other enterprise that furnishes food, lodging, or guide services may not furnish to a client or guest of that enterprise, shellfish that has been taken under this chapter, unless:

(i) The shellfish has been taken with gear deployed and retrieved by the client or guest who is a federally-qualified subsistence user;

(ii) The gear has been marked with the client's or guest's name and address; and

(iii) The shellfish is to be consumed by the client or guest or is consumed in the presence of the client or guest.

(2) The captain and crewmembers of a charter vessel may not deploy, set, or retrieve their own gear in a subsistence shellfish fishery when that vessel is being chartered.

(k) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(2) *Prince William Sound Area.* No marine waters are currently identified under Federal subsistence management jurisdiction.

(3) *Cook Inlet Area.* You may not take shellfish for subsistence purposes.

(4) *Kodiak Area.* (i) You may take crab for subsistence purposes only under the authority of a subsistence crab fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only male Dungeness crabs with a shell width of 6½ inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is six crabs per household; only male king crab may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may not use more than five crab pots, each being no more than 75 cubic feet in capacity to take king crab;

(D) You may take king crab only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or Tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womens Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of Tanner crab:

(A) You may not use more than five crab pots to take Tanner crab;

(B) You may not take Tanner crab in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a commercial king or Tanner crab fishing season in the location;

(C) The daily harvest and possession limit is 12 male crab with a shell width 5½ inches or greater per person.

(5) *Alaska Peninsula-Aleutian Islands Area.* (i) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(ii) The daily harvest and possession limit is 12 male Dungeness crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(iii) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crabs per person; only crabs with a shell width of 6½ inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a 2-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) You may take crabs only from June 1–January 31.

(iv) The daily harvest and possession limit is 12 male Tanner crabs per person; only crabs with a shell width of 5½ inches or greater may be taken or possessed.

(6) *Bering Sea Area.* (i) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots, and ring net.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or

subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Dungeness crab per person.

(iv) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., you may take crab only from June 1–January 31;

(D) In the Norton Sound Section of the Northern District, you must have a subsistence permit.

(v) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male Tanner crab.

Dated: December 19, 2000.

Kenneth E. Thompson,

Acting Regional Forester, USDA-Forest Service.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 01–1954 Filed 2–12–01; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

Federal Register

Tuesday,
February 13, 2001

Part V

Department of Health and Human Services

42 CFR Part 36

Meeting of the Negotiated Rulemaking Committee on Joint Tribal and Federal Self-Governance; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 36

Meeting of the Negotiated Rulemaking Committee on Joint Tribal and Federal Self-Governance

AGENCY: Indian Health Service, HHS.

ACTION: Notice of meeting.

SUMMARY: The Secretary of Health and Human Services has established a Negotiated Rulemaking Committee on Joint Tribal and Federal Self-Governance (Committee) to negotiated and develop a proposed rule implementing the Tribal Self-Governance Amendments of 2000, Public Law 106–260 (the Act). It is our intent to publish the proposed rule for notice and comment no later than one year after the date of enactment of the Act (August 18, 2000 + one year), as required by section 517(a)(2) of the Act.

DATES: The Committee will have its first two meetings as shown below:

1. February 27–28, 2001, 8:30 a.m.–5 p.m., Washington, DC.
2. March 15–16, 2001, 8:30 a.m.–5 p.m., San Diego, CA.

ADDRESSES: The meeting locations are:

1. Washington, DC—Sheraton Four Points Hotel, 1201 K Street, NW., Washington, DC 20005.
2. San Diego, CA—Clarion Hotel Bay View, 660 K Street, San Diego, CA 92101.

Written statements may be submitted to Paula Williams Director, Office of Tribal Self-Governance, Indian Health Service, 5600 Fishers Lane, Room 5A–55, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Paula Williams, Director, Office of Tribal Self-Governance, Indian Health Services, 5600 Fishers Lane, Room 5A–55, Rockville, MD 20857, Telephone 301–443–7821. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the **Federal Register**. The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting to the extent time permits can file written statements with the Committee for its consideration. Written statements should be submitted to the address listed above. Summaries of Committee meetings will be available for public inspection and copying ten days following each meeting at the same address. In accordance with 41 CFR 101–6.1015(b)(2), we note that this notice may be published less than 15 days prior to the first meeting because of delay in formal appointment of committee members due to temporary hiring freeze.

Dated: February 7, 2001.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 01–3569 Filed 2–12–01; 12:25 am]

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Note: The List of Public Laws for the 106th Congress, Second Session has been completed and will resume when bills are enacted into public law during the next session of Congress.

A cumulative List of Public Laws was published in Part II of the **Federal Register** on January 16, 2001.

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