AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Federal Register

4–30–02 Tuesday
Vol. 67 No. 83 April 30, 2002
Pages 21159–21558

The **FEDERAL REGISTER** is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see http://www.nara.gov/fedreg.

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and it includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

GPO Access users can choose to retrieve online **Federal Register** documents as TEXT (ASCII text, graphics omitted), PDF (Adobe Portable Document Format, including full text and all graphics), or SUMMARY (abbreviated text) files. Users should carefully check retrieved material to ensure that documents were properly downloaded.

On the World Wide Web, connect to the **Federal Register** at http://www.access.gpo.gov/nara. Those without World Wide Web access can also connect with a local WAIS client, by Telnet to swais.access.gpo.gov, or by dialing (202) 512–1661 with a computer and modem. When using Telnet or modem, type swais, then log in as guest with no password.

For more information about GPO Access, contact the GPO Access User Support Team by E-mail at gpoaccess@gpo.gov; by fax at (202) 512–1262; or call (202) 512–1530 or 1–888–293–6498 (toll free) between 7 a.m. and 5 p.m. Eastern time, Monday–Friday, except Federal holidays.

The annual subscription price for the **Federal Register** paper edition is $699, or $764 for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $264. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $10.00 for each issue, or $10.00 for each group of pages as actually bound; or $2.00 for each issue in microfiche form. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 67 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–523–5243**
Assistance with Federal agency subscriptions	**202–523–5243**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

Printed on recycled paper.

Contents

Federal Register

Vol. 67, No. 83

Tuesday, April 30, 2002

Agricultural Marketing Service
RULES
Cherries (tart) grown in—
Michigan et al., 21161–21167
Cotton research and promotion:
Sign-up procedures, 21167–21170

Agricultural Research Service
NOTICES
Environmental statements; notice of intent:
Cotton crop; new partially validated simulation model, 21208–21209

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See Forest Service
See Natural Resources Conservation Service
See Rural Telephone Bank
See Rural Utilities Service

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Karnal bunt, 21159–21161
PROPOSED RULES
Plant-related quarantine, domestic:
Fire ant, imported, 21183–21185

Antitrust Division
NOTICES
National cooperative research notifications:
Financial Services Technology Consortium, Inc., 21271
IMS Global Learning Consortium, Inc., 21271

Architectural and Transportation Barriers Compliance Board
NOTICES
Meetings:
Access Board, 21217

Centers for Disease Control and Prevention
NOTICES
Reports and guidance documents; availability, etc.:
Healthcare Facilities; Disinfection and Sterilization, 21252

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection notice:
Submission for OMB review; comment request, 21217–21218

Committee for the Implementation of Textile Agreements
NOTICES
Bilateral textile consultations:
Belarus, 21220–21222

Consumer Product Safety Commission
NOTICES
Auxiliary hazard lighting systems for snowmobiles; petition requesting performance standards, 21222
Reports and guidance documents; availability, etc.:
Information disseminated to public; quality, objectivity, utility, and integrity, 21222–21223
Settlement agreements:
Peg Perego U.S.A., Inc., 21223–21224

Copyright Office, Library of Congress
RULES
Copyright Arbitration Royalty Panel rules and procedures:
Cable and satelite royalties alternative claims filing methods; waiver, 21176–21178

Customs Service
NOTICES
Reports and guidance documents; availability, etc.:
Importer Compliance Monitoring Program; termination, 21322

Defense Department
See Navy Department
RULES
Federal Acquisition Regulation (FAR):
Balance of Payments Program, 21533–21537
European Union trade sanctions, 21537–21538
Introduction, 21531–21532
Performance-based contracting preference, 21532–21534
Small entity compliance guide, 21538–21539
Technical amendments, 21537–21539
PROPOSED RULES
Grant and agreement regulations:
Technology investment agreements, 21485–21519
NOTICES
Arms sales notification; transmittal letter, etc., 21224–21229
Reports and guidance documents; availability, etc.:
Information disseminated to public; quality, objectivity, utility, and integrity, 21229

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Elementary School Foreign Language Incentive Program, 21541–21558

Employment and Training Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 21277–21278

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
UBS AG, London Branch, 21230
Powerplant and industrial fuel use; new electric powerplant coal capability:
Self-certification filings—
Migrant Zeeland, LLC, et al., 21230–21231

Environmental Protection Agency
RULES
Air pollution control:
Interstate ozone transport reduction—
Federal Nitrogen Oxides Budget Trading Program; Section 126 petitions; revised deadlines, 21521–21530
PROPOSED RULES
Air quality planning purposes; designation of areas:
Nevada, 21194–21197
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 21231–21232
Pesticide programs:
Endangered Species Act—
Pesticide uses and potential effects on plants and fish; proposed consent decree; comments request, 21232–21234
Reports and guidance documents; availability, etc.:
Information Quality Guidelines; comment request; meeting announcement, 21234–21235
Superfund; response and remedial actions, proposed settlements, etc.:
Hermiston Laboratory Site, OR, 21235–21236

Executive Council on Integrity and Efficiency
NOTICES
Senior Executive Service:
Performance Review Board; membership, 21301–21302

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 21236

Federal Aviation Administration
RULES
Class E airspace, 21170–21171
PROPOSED RULES
Bell, 21185–21187

Federal Communications Commission
RULES
Radio stations; table of assignments:
Missouri, 21182
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 21236

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Various States, 21178–21182
NOTICES
Disaster and emergency areas:
Kentucky, 21236–21237
Tennessee, 21237
Virginia, 21237
Grants and cooperative agreements; availability, etc.:
Cooperating Technical Partners Program, 21237–21240

Federal Energy Regulatory Commission
NOTICES
Meetings; Sunshine Act, 21231

Federal Reserve System
NOTICES
Agency information collection activities:
Proposed collection; comment request, 21240–21241
Banks and bank holding companies:
Change in bank control, 21241–21242
Formations, acquisitions, and mergers, 21242
Permissible nonbanking activities, 21242–21243
Meetings; Sunshine Act, 21243

Federal Trade Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 21243–21247
Premerger notification waiting periods; early terminations, 21247–21248
Prohibited trade practices:
Biovail Corp., 21248–21252

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Northland Insurance Co.; termination, 21322

Fish and Wildlife Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 21268–21269

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Sponsor name, and address changes—
Alpharma, Inc., 21171
Medical devices:
Orthopedic devices—
Hip joint metal/polymer constrained cemented or uncemented prosthesis; reclassification, 21171–21173
NOTICES
Agency information collection activities:
Proposed collection; comment request, 21252–21255
Reporting and recordkeeping requirements, 21255
Debarment orders:
Petrik, Craig H., 21255–21256
Reports and guidance documents; availability, etc.:
Medical devices—
Orthopedic devices; hip joint metal/ploymer constrained cemented or uncemented prosthesis; class II special controls, 21256

Food Safety and Inspection Service
NOTICES
Meat and poultry inspection:
Retail store operations, exemption; dollar limitations adjustment, 21209–21210

Forest Service
NOTICES
Environmental statements; notice of intent:
Kootenai and Idaho Panhandle National Forests, ID, MT and WA, 21210–21214
Meetings:
Resource Advisory Committees—
North Central Idaho, 21214–21215

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Balance of Payments Program, 21533–21537
European Union trade sanctions, 21537–21538
Introduction, 21531–21532
Performance-based contracting preference, 21532–21534
Small entity compliance guide, 21538–21539
Technical amendments, 21537–21539

Geological Survey
NOTICES
Grant and cooperative agreement awards:
Student Conservation Association, Inc., 21269
Meetings:
Scientific Earthquake Studies Advisory Committee, 21269

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Radiation Exposure Screening and Education Program, 21256–21258
Special Projects of National Significance—
HIV-Infected Individuals in Primary Care Settings; HIV Prevention Initiative; Evaluation and Program Support Center, 21258–21260

Housing and Urban Development Department
NOTICES
Mortgage and loan insurance programs:
Credit Watch Termination Initiative; list of mortgagees whose Origination Approval Agreements have been terminated, 21265–21268

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 21271–21276

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Minerals Management Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
PROPOSED RULES
Income taxes:
Property transfers to Regulated Investment Companies and Real Estate Investment Trusts; cross-reference
Hearing cancellation, 21187
NOTICES
Agency information collection activities:
Proposed collection; comment request, 21323–21324
Committees; establishment, renewal, termination, etc.:
Citizen Advocacy Panel, 21324–21325

International Trade Administration
NOTICES
Antidumping:
Freshwater crawfish tail meat from—
China, 21218–21219

Justice Department
See Antitrust Division
See Immigration and Naturalization Service
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 21276–21277

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
NOTICES
Reports and guidance documents; availability, etc.:
Texas; Natural Gas Royalty-In-Kind Pilot Report, 21269–21270

Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 21278–21279

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Balance of Payments Program, 21533–21537
European Union trade sanctions, 21537–21538
Introduction, 21531–21532
Performance-based contracting preference, 21532–21534
Small entity compliance guide, 21538–21539
Technical amendments, 21537–21539

National Archives and Records Administration
NOTICES
Reports and guidance documents; availability, etc.:
Information disseminated to public; quality, objectivity, utility, and integrity, 21280–21281

National Council on Disability
NOTICES
Meetings:
Youth Advisory Committee, 21281

National Highway Traffic Safety Administration
PROPOSED RULES
Confidential business information, 21198–21206

National Institute of Standards and Technology
NOTICES
Agency information collection activities:
Proposed collection; comment request, 21219–21220

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic deep-sea red crab, 21206–21207

NOTICES
Meetings:
North Pacific Fishery Management Council, 21220

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
Sandstone Creek Watershed , OK, 21215
South Slough Estuarine Research Reserve, OR, 21215

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 21229–21230

Nuclear Regulatory Commission
PROPOSED RULES
Radioactive material; packaging and transportation:
International Atomic Energy Agency transportation safety standards (TS-R-I) and other transportation safety amendments; compatibility, 21389–21484
NOTICES
Agency information collection activities:
Proposed collection; comment request, 21281
Submission for OMB review; comment request, 21282–21283
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 21283–21301
Applications, hearings, determinations, etc.:
Entergy Operations, Inc., 21283

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 21279–21280

President's Council on Integrity and Efficiency
NOTICES
Senior Executive Service:
Performance Review Board; membership, 21301–21302

Public Debt Bureau
See Fiscal Service

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Environmental statements; notice of intent:
Kennewick and Columbia Irrigation Districts, WA; pump exchange feasibility study, 21270–21271

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Hazardous materials transportation—
Radioactive materials; compatibility with International Atomic Energy Agency regulations, 21327–21388
NOTICES
Meetings:
International standards on transport of dangerous goods, 21320

Rural Telephone Bank
NOTICES
Meetings; Sunshine Act, 21215–21216

Rural Utilities Service
NOTICES
Launching Our Communities' Access to Local Television; implementation; information request, 21216–21217

Securities and Exchange Commission
NOTICES
Joint industry plan:
Philadelphia Stock Exchange, Inc., et al., 21302–21303
Self-regulatory organizations; proposed rule changes:
Boston Stock Exchange, Inc., 21304
Chicago Board Options Exchange, Inc., 21305
International Securities Exchange LLC, 21306–21308
National Association of Securities Dealers, Inc., 21308–21313
National Futures Association, 21313–21315
Pacific Exchange, Inc., 21315–21316

Special Counsel Office
NOTICES
Reports and guidance documents; availability, etc.:
Information disseminated to public; quality, objectivity, utility, and integrity, 21316–21319

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Mental Health Services Center—
Jail Diversion Programs, 21263–21265
Racial and ethnic disparities reduction; workforce training, 21262–21263
Violence and Behavioral Health Problems Prevention; Technical Assistance Resource Center, 21260–21262

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky, 21173–21176
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania, 21187–21191

Surface Transportation Board
NOTICES
Rail carriers:
Non-Class I railroads; calculation of variable costs in rate complaint proceedings, 21321

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
See Transportation Statistics Bureau

NOTICES
Reports and guidance documents; availability, etc.:
Information dissemination to public; quality, utility, objectivity, and integrity, 21319–21320

Transportation Statistics Bureau
NOTICES
Meetings:
Transportation Statistics Advisory Council, 21321–21322

Treasury Department
See Customs Service
See Fiscal Service
See Internal Revenue Service

Veterans Affairs Department
PROPOSED RULES
Fisher Houses and other temporary lodging; veterans use, 21191–21194
NOTICES
Reports and guidance documents; availability, etc.:
Federal Research Misconduct Policy; adoption, 21325–21326

Separate Parts In This Issue

Part II
Transportation Department, Research and Special Programs Administration, 21327–21388

Part III
Nuclear Regulatory Commission, 21389–21484

Part IV
Defense Department, 21485–21519

Part V
Environmental Protection Agency, 21521–21530

Part VI
Defense Department; General Services Administration; National Aeronautics and Space Administration, 21531–21539

Part VII
Education Department, 21541–21558

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.
To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
301.....21159
930.....22161
1205.....21167
Proposed Rules:
301.....21183
10 CFR
Proposed Rules:
71.....21390
14 CFR
71.....21170
Proposed Rules:
39.....21185
21 CFR
558.....21171
888.....21171
26 CFR
Proposed Rules:
1.....21187
30 CFR
917.....21173
Proposed Rules:
938.....21187
32 CFR
Proposed Rules:
21.....21486
22.....21486
32.....21486
34.....21486
37.....21486
37 CFR
252.....21176
257.....21176
38 CFR
Proposed Rules:
60.....21191
40 CFR
97.....21522
Proposed Rules:
81.....21194
44 CFR
65.....21178
47 CFR
73.....21182
48 CFR
Ch. 1 (2 documents) 21532, 21539
2.....21533
7.....21533
12.....21538
13.....21534
25 (2 documents) 21534, 21538
37.....21533
52 (2 documents) 21534, 21538
49 CFR
Proposed Rules:
171.....21328
172.....21328
173.....21328
174.....21328
175.....21328
176.....21328
177.....21328
178.....21328
512.....21198
50 CFR
Proposed Rules:
648.....21206

Rules and Regulations

Federal Register
Vol. 67, No. 83
Tuesday, April 30, 2002

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–118–1]

Karnal Bunt; Restrictions on the Use of Grain Originating in a Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Karnal bunt regulations to prohibit grain grown in a regulated area from being used as seed outside the regulated areas. This action is necessary to address the absence in the regulations of an explicit prohibition on the use of grain grown in a regulated area as seed in fields located outside the regulated area. We are also removing the requirement that wheat seed, durum wheat seed, and triticale seed that originates within a regulated area be treated with a fungicide before it may be planted within a regulated area. This interim rule will help to prevent the artificial spread of Karnal bunt to fields outside the regulated area by prohibiting the use of potentially spore-positive grain as seed in those fields and will remove a treatment requirement that we have determined is not necessary.

DATES: This interim rule was effective April 25, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 1, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–118–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–118–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–118–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Spaide, Director, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–7819.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets.

Use of Grain as Seed

The domestic quarantine and regulations regarding Karnal bunt are set forth in ''Subpart—Karnal Bunt'' (7 CFR 301.89–1 through 301.89–16, referred to below as the regulations). Among other things, the regulations define areas regulated for Karnal bunt and restrict the movement of regulated articles, including wheat seed and grain, from the regulated areas. Those movement restrictions are designed to prevent the artificial spread of Karnal bunt. Certain regulated articles are eligible for movement out of a regulated area under a certificate, which is a document in which an inspector or a person operating under a compliance agreement affirms that a specified regulated article meets the requirements of the regulations and may be moved to any destination. Other articles may be moved only under a limited permit, which is a document in which an inspector affirms that a specified regulated article not eligible for a certificate is eligible for movement only to a specified destination and in accordance with conditions specified on the permit. However, the regulations have not included an explicit prohibition on the use of grain grown in a regulated area as seed in fields located outside the regulated area.

A recent case made apparent the need for such an explicit prohibition. In that case, grain produced in a Texas county that subsequently became a regulated area was moved to a storage facility outside that county before it was designated as a regulated area. Once the county was designated as a regulated area and it was determined that grain produced in that county was being stored outside the regulated area, the grain was tested for Karnal bunt and found free of bunted kernels. Because this grain originated in a regulated area and had not been found negative for Karnal bunt through testing at the field level, the grain (and the grain with which it had been commingled) was ineligible for movement under a certificate and could only move under limited permit. During routine audits of the issued limited permits from the storage facility, we discovered that some of the commingled grain had been sold for seed. Subsequent sampling at the facility of the lots sold as seed confirmed that the seed was spore positive, so the grain was not eligible for use as seed within the regulated area. Upon further investigation, we found that some of the commingled grain had been used as seed in fields outside the regulated area. It is, therefore, possible that the use of spore-positive grain as seed will result in the artificial spread

of Karnal bunt to the fields outside the regulated area in which it was planted. Although the regulations in § 301.89–6(c) regarding limited permits state that regulated articles may be moved under a limited permit only if the movement will not result in the artificial spread of Karnal bunt, it appears that the absence of an explicit prohibition on the use of grain produced in a regulated area as seed outside the regulated area may have played a role in the case described above. This interim rule is necessary to prevent a recurrence of this situation.

Specifically, we are amending § 301.89–4, ''Planting,'' to add a paragraph prohibiting wheat, durum wheat, and triticale that originates within a regulated area from being planted outside a regulated area.

We are also amending § 301.89–6, ''Issuance of a certificate or limited permit,'' to prohibit wheat, durum wheat, and triticale that is moved out of a regulated area under a certificate from being used for planting outside the regulated area. These changes will help to prevent the artificial spread of Karnal bunt to fields outside the regulated area by explicitly prohibiting the use of potentially spore-positive grain as seed in those fields.

Seed Treatment

The regulations also require that seed that originates within a regulated area must be treated with an approved fungicide before it may be planted within a regulated area. We are eliminating this requirement because we have been unable to conclusively establish that fungicide treatments applied to seed are effective in preventing Karnal bunt infection. The biology of the Karnal bunt pathogen is such that the disease does not occur until the flowering stage of the host plant, and then only if conditions are right; there is currently no supportive literature that shows the seed treatments reduce infection at flowering. We are, therefore, amending § 301.89–4 to remove the requirement for fungicide treatment for wheat seed, durum wheat seed, and triticale seed that originates within a regulated area before it may be planted within a regulated area. Further, the removal of this treatment requirement means that the seed treatment methods listed in § 301.89–13(d) are no longer necessary, so we are amending § 301.89–13, ''Treatments,'' by removing paragraph (d).

Miscellaneous

We are also making one minor editorial change to § 301.89–6(d). That paragraph has referred to the issuance of certificates under § 301.89–6(a) and limited permits under § 301.89–6(b). However, paragraphs (a) and (b) of § 301.89–6 currently pertain to the issuance of certificates, and the requirements for the issuance of limited permits are in paragraph (c) of that section. We have, therefore, amended § 301.89–6(d) so that it refers to the correct paragraphs.

Immediate Action

Immediate action is necessary to prevent the artificial spread of Karnal bunt to fields outside the regulated area and to remove a treatment requirement that we have determined is unnecessary. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the Karnal bunt regulations to prohibit grain grown in a regulated area from being used as seed outside the regulated areas. This action is necessary to address the absence in the regulations of an explicit prohibition on the use of grain grown in a regulated area as seed in fields located outside the regulated area. We are also removing the requirement that wheat seed, durum wheat seed, and triticale seed that originates within a regulated area be treated with a fungicide before it may be planted within a regulated area.

Currently, major foreign importers will not accept U.S. wheat unless it can be certified as coming from an area where Karnal bunt is not known to exist. To the extent that it helps prevent the artificial spread of Karnal bunt in the United States, this interim rule has the potential for averting the loss of export sales of U.S. wheat. The potential economic benefits are substantial; perhaps as much as 20 to 25 percent of U.S. wheat exports are contingent on the Karnal bunt certification. During the first 10 months of 2001, the U.S. exported 20.7 million metric tons of wheat, valued at $2.7 billion.

As a practical matter, this interim rule's prohibition on the use of grain grown in a regulated area from being used as seed outside the regulated area is likely to have little or no negative economic impact. This is because most growers outside regulated areas, aware of the risks involved, are unlikely to knowingly use grain grown in a regulated area as seed. Furthermore, this specific prohibition would have no impact on the ability of growers in non-regulated areas to continue using grain (as opposed to the more costly certified seed) for planting. Growers in non-regulated areas will still be able to use grain as seed, as long as it is grown outside the regulated areas.

This aspect of the interim rule also will not prevent growers and handlers in regulated areas from selling their spore-positive (but bunted kernel negative) wheat outside regulated areas; they will still be able to do so, as long as it is used for grain or another approved purpose.

The removal of the fungicide requirement will save growers approximately $225,000 per year for seed produced within the regulated area. Most of the savings (approximately $175,000) will accrue to growers in the four regulated northern Texas counties of Archer, Baylor, Throckmorton, and Young. The balance of the savings will accrue to growers in San Saba County, TX, and in the regulated areas of California. The cost of fungicide treatment varies, but generally runs from $0.50 to $1 per bushel. The savings might potentially affect approximately 470 growers, at an average of $479 per grower.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small businesses, organizations, and governmental jurisdictions. Growers and handlers of wheat (especially those in or near the regulated areas of Texas) are the entities most likely to be affected by this interim rule.

It is estimated that there are a total of 450 to 500 wheat growers and handlers in the regulated areas of Texas, most of whom are growers with total annual sales of less than $750,000, the Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, any economic impact of the rule change will fall largely on small entities.

As explained previously, this rule's prohibition on the use of grain grown in a regulated area as seed in fields outside

the regulated area is likely to have little or no economic impact. The removal of the fungicide treatment requirement will save growers the cost of treatment, which varies from $0.50 to $1 per bushel, thus resulting in a slight reduction in per-acre planting costs.

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Section 301.89–4 is revised to read as follows:

§ 301.89–4 Planting.

(a) Wheat, durum wheat, and triticale may be planted in all fields within a regulated area. All wheat seed, durum wheat seed, and triticale seed that originates within a regulated area must be tested and found free from spores and bunted wheat kernels before it may be planted within a regulated area.

(b) No wheat, durum wheat, or triticale that originates within a regulated area may be used for planting outside a regulated area.

3. In § 301.89–6, paragraph (b) is amended by adding a new sentence after the last sentence, and paragraph (d) is amended by revising the last sentence to read as follows:

§ 301.89–6 Issuance of a certificate or limited permit.

* * * * *

(b) * * * No wheat, durum wheat, or triticale moved out of a regulated area under a certificate may be used for planting outside the regulated area.

* * * * *

(d) * * * These certificates and limited permits may then be completed and used, as needed, for the movement of regulated articles that have met the applicable requirements of paragraphs (a) and (b) of this section for the issuance of certificates or of paragraph (c) of this section for the issuance of limited permits.

§ 301.89–13 [Amended]

4. In § 301.89–13, paragraph (d) is removed and reserved.

Done in Washington, DC, this 25th day of April 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–10566 Filed 4–29–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV02–930–1 FR]

Tart Cherries Grown in the States of Michigan, et al.; Final Free and Restricted Percentages for the 2001–2002 Crop Year for Tart Cherries

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes final free and restricted percentages for the 2001–2002 crop year. The percentages are 59 percent free and 41 percent restricted and will establish the proportion of cherries from the 2001 crop which may be handled in commercial outlets. The percentages are intended to stabilize supplies and prices, and strengthen market conditions and were recommended by the Cherry Industry Administrative Board (Board), the body which locally administers the marketing order. The marketing order regulates the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

DATES: Effective July 1, 2001, through June 30, 2002. This rule applies to tart cherries acquired during the 2001–2002 crop year until the restricted cherries from that crop year are diverted or used for exempt purposes under the marketing order.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5234, or Fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries produced in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order provisions now in effect, final free and restricted percentages may be established for tart cherries handled by handlers during the crop year. This rule will establish final free and restricted percentages for tart cherries for the 2001–2002 crop year, beginning July 1, 2001, through June 30, 2002. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempt therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The order prescribes procedures for computing an optimum supply and preliminary and final percentages that establish the amount of tart cherries that can be marketed throughout the season. The regulations apply to all handlers of tart cherries that are in the regulated districts. Tart cherries in the free percentage category may be shipped immediately to any market, while restricted percentage tart cherries must be held by handlers in a primary or secondary reserve, or be diverted in accordance with § 930.59 of the order and § 930.159 of the regulations, or used for exempt purposes (and obtaining diversion credit) under § 930.62 of the order and § 930.162 of the regulations. The regulated Districts for this season are: District one—Northern Michigan; District two—Central Michigan; District three—Southwest Michigan; District four—New York; and District eight—Washington. Districts five, six, seven, and nine (Oregon, Utah, Pennsylvania, and Wisconsin, respectively), will not be regulated for the 2001–2002 season.

The order prescribes under § 930.52 that, upon adoption of the order, those districts to be regulated shall be those districts in which the average annual production of cherries over the prior three years has exceeded 15 million pounds. A district not meeting the 15 million-pound requirement shall not be regulated in such crop year. Because this requirement was not met in the districts of Oregon, Pennsylvania, and Wisconsin, handlers in those districts will not be subject to volume regulation during the 2001–2002 crop year. Section 930.52 also prescribes that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous five years will be exempt from any volume regulation if, in that year, a restricted percentage is established. Because Utah's production is less than the 50 percent of the previous 5-year production average, handlers in Utah also will not be subject to volume regulation during the 2001–2002 crop year. Production from District four (New York) was not regulated last crop year, but, as mentioned above, will be regulated in 2001–2002. This will be the first year of regulation for District eight (Washington), since the order was promulgated.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. Demand for tart cherries and tart cherry products tends to be relatively stable from year to year. The supply of tart cherries, by contrast, varies greatly from crop year to crop year. The magnitude of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into canned or frozen products, they can be stored and carried over from crop year to crop year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely balanced. The primary purpose of setting free and restricted percentages is to balance supply with demand and reduce large surpluses that may occur.

Section 930.50(a) of the order describes procedures for computing an optimum supply for each crop year. The Board must meet on or about July 1 of each crop year, to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume is calculated as 100 percent of the average sales of the prior three years to which is added a desirable carryout inventory not to exceed 20 million pounds, or such other amount as may be established with the approval of the Secretary. The optimum supply represents the desirable volume of tart cherries that should be available for sale in the coming crop year.

The order also provides that on or about July 1 of each crop year, the Board is required to establish preliminary free and restricted percentages. These percentages are computed by deducting the actual carryin inventory from the optimum supply figure (adjusted to raw product equivalent—the actual weight of cherries handled to process into cherry products) and subtracting that figure from the current year's USDA crop forecast. If the resulting number is positive, this represents the estimated over-production, which would be the restricted percentage tonnage. The restricted percentage tonnage is then divided by the sum of the USDA crop forecast for the regulated districts to obtain percentages for the regulated districts. The Board is required to establish a preliminary restricted percentage equal to the quotient, rounded to the nearest whole number, with the complement being the preliminary free tonnage percentage. If the tonnage requirements for the year are more than the USDA crop forecast, the Board is required to establish a preliminary free tonnage percentage of 100 percent and a preliminary restricted percentage of zero. The Board must announce the preliminary percentages in accordance with paragraph (h) of § 930.50.

The Board met on June 21, 2001, and computed, for the 2001–2002 crop year, an optimum supply of 219 million pounds. The Board recommended that the desirable carryout figure be zero pounds. Desirable carryout is the amount of fruit required to be carried into the succeeding crop year and is set by the Board after considering market circumstances and needs. This figure can range from zero to a maximum of 20 million pounds. The Board calculated preliminary free and restricted percentages as follows: The USDA estimate of the crop was 356 million pounds; a 33 million pound carryin added to the estimate results in a total available supply of 389 million pounds. The carrying figure reflects the amount of cherries that handlers actually have in inventory. Subtracting the optimum supply of 219 million pounds from the total estimated available supply results in a surplus of 170 million pounds of tart cherries. An adjustment for changed economic conditions of 50 million pounds was subtracted from the surplus, pursuant to § 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 120 million pounds of tart cherries. The surplus was divided by the production in the regulated districts (338 million pounds) and resulted in a restricted percentage of 36 percent for the 2001–2002 crop year. The free percentage was 64 percent (100 percent minus 36 percent). The Board unanimously established these percentages and announced them to the industry as required by the order.

The preliminary percentages were based on the USDA production estimate and the following supply and demand information available at the June meeting for the 2001–2002 year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	219
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the June meeting	219
Preliminary Percentages	
(4) USDA crop estimate	356
(5) Plus carryin held by handlers as of July 1, 2000	33
(6) Total available supply for current crop year	389
(7) Surplus (item 6 minus item 3)	170
(8) Economic adjustment to surplus	50
(9) Adjusted surplus (item 7 minus item 8)	120
(10) USDA crop estimate for regulated districts	338

Percentages	Free	Restricted
(11) Preliminary percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	64	36

Between July 1 and September 15 of each crop year, the Board may modify the preliminary free and restricted percentages by announcing interim free and restricted percentages to adjust to the actual pack occurring in the industry.

On September 17, 2001, the Board conducted a telephone meeting and voted unanimously to establish interim percentages since the September 13, 2001, meeting was postponed until October due to the tragic events on September 11, 2001. The Board recommended an interim free percentage of 57 percent and an interim restrictive percentage of 43 percent. These percentages were based on the actual production for the 2001–2002 crop year of 366 million pounds, and more up-to-date sales and carryin inventory amounts.

Section 930.50(d) of the order requires the Board to meet me no later than September 15 to recommend final free and restricted percentages to the Secretary for approval. Because of the events of September 11, 2001, and subsequent flight delays, the Board met on October 12, 2001, and recommended final free and restricted percentages of 59 percent and 41 percent, respectively. At that time, the Board had available actual production, sales, and carryin inventory amounts to review and made adjustments to the interim percentages.

The Secretary establishes final free and restricted percentages through the informal rulemaking process. These percentages will make available the tart cherries necessary to achieve the optimum supply figure calculated by the Board. The difference between any final free percentage designated by the Secretary and 100 percent is the final restricted percentage.

The Board used an updated optimum supply figure in determining the final free and restricted percentages. The revised optimum supply is 217 million pounds, instead of 219 million pounds used in June 2001. The 3-year average sales figure computed in June included an estimate of June 2001 sales because actual June sales were not yet available. The 3-year average sales figure used in the final calculations reflects actual sales for each months of the 3-year period.

The actual production reported by the Board was 366 million pounds, which is a 10 million pound increase from the USDA crop estimate of 356 million pounds. The increase in production was due to higher yields in the major producing States (Michigan, New York, and Washington). For 2001–2002, production in the regulated districts totaled 336 million pounds, 2 million pounds less than the USDA estimate of 338 million pounds.

A 39 million pound carryin (actual carryin as opposed to the 33 million pounds originally estimated in June) was added to the Board's reported production of 366 million pounds, yielding a total available supply for the current crop year of 405 million pounds. The optimum supply of 217 million pounds was subtracted from the total available supply which resulted in a 188 million pound surplus. An adjustment of 50 million pounds for changed economic conditions was subtracted from the surplus, pursuant to § 930.50 of the order. This adjustment is discussed later in this document. After the adjustment, the resulting total surplus is 138 million pounds of tart cherries. The total surplus of 138 million pounds is divided by the 336 million-pound volume of tart cherries produced in the regulated districts. This results in a 41 percent restricted percentage and a corresponding 59 percent free percentage for the regulated districts.

The final percentages are based on the Board's reported production figures and the following supply and demand information available in October for the 2001–2002 crop year:

	Millions of pounds
Optimum Supply Formula:	
(1) Average sales of the prior three years	217
(2) Plus desirable carryout	0
(3) Optimum supply calculated by the Board at the October meeting	217
Final Percentages:	
(4) Board reported production	366
(5) Plus carryin held by handlers as of July 1, 2001.	39
(6) Tonnage available for current crop year	405
(7) Surplus (item 6 minus item 3)	188
(8) Economic adjustment to surplus	50
(9) Adjusted surplus (item 7 minus 8)	138

	Millions of pounds
(10) Production in regulated districts	336

Percentages	Free	Restricted
(11) Final Percentages (item 9 divided by item 10 × 100 equals restricted percentage; 100 minus restricted percentage equals free percentage)	59	41

As previously mentioned, the Board recommend an economic adjustment of 50 million pounds in computing both the preliminary and final percentages for the 2001–2002 crop year. This is authorized under § 930.50. These provisions provide that in its deliberations of volume regulation recommendations, the Board consider, among other things, the expected demand conditions for cherries in different market segments and an analysis of economic factors having a bearing on the marketing of cherries. Based on these considerations, the Board may modify its marketing policy calculations to reflect changes in economic conditions. The Board recommended the adjustment to reflect the impact USDA surplus removal purchases might have on the sales component of the optimum supply formula.

Purchases by USDA and other government agencies are part of the average sales history for the industry. In recent years, USDA and other government purchases of tart cherry products have averaged about 17 million pounds and these have been factored into the optimum supply formula. In 2000–2001, USDA announced the acceptance of bids for a large surplus removal purchase. The amount of the purchases is expected to total 50 million pounds and be delivered during the 2001–2002 crop year. The Board discussed how this purchase should be accounted for in the optimum supply formula. The Board decided on a full 50-million pound economic adjustment because it results in a smaller restricted percentage than with no adjustment. With the adjustment, the restricted percentage is 41 percent. Without the adjustment, the restricted percentage would have been 56 percent.

By recommending this marketing policy modification, the Board believes that fewer cherries would have to be diverted and more cherries will be available to meet market needs. This modification is intended to further facilitate and encourage market expansion. It is also expected to benefit growers who receive higher payments for free tonnage cherries.

In May 2001, reserve release provisions were added to the administrative rules and regulations in § 930.154. The provisions provide that if USDA or any other governmental agency initiates an invitation to purchase product for surplus removal (as a non-entitlement purchase), the Board shall release a like quantity of cherries from the reserve pool to each handler who has a proportionate share in the reserve. These provisions were not effective prior to the initiation of the initiation to bid on USDA's planned 50 million pound surplus removal purchase. Therefore, reserve cherries could not be released from the inventory reserve pursuant to § 930.154 and the cherries had to be supplied from free tonnage, not reserve tonnage. Consequently, the Board recommended the economic adjustment of 50 million pounds to account for the free tonnage cherries delivered from 2001–2002 crop to satisfy the purchase. If an invitation to bid on a surplus removal purchase is initiated by USDA or another government agency during the 2001–2002 crop year, or subsequent season, a like quantity of reserve tonnage would be released under § 930.1544 and no economic adjustment would necessary to account for those cherries. The Board believes that such releases will equitably spread the benefit of such purchases throughout the industry because all handlers regulated under the order, and not just those handlers who successfully bid and sold product to USDA or other government agencies, will benefit from the surplus removal of tart cherry purchases.

The Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders '' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. This goal will be met by the establishment of a preliminary percentage which releases 100 percent of the optimum supply and the additional release of tart cherries provided under § 930.50(g). This release of tonnage, equal to 10 percent of the average sales of the prior three years sales, is made available to handlers each season. The Board recommended that such release should be made available to handlers the first week of December 2001 and the first week of May 2002. Handlers can decide how much of the 10 percent release they would like to receive during the December and May release dates. Once released, such cherries are available for free use by such handler. Approximately 22 million pounds would be made available to handlers this season in accordance with Department Guidelines. This release will be made available to every handler and released to such handlers in proportion to each handlers percentage of the total regulated crop handled. If a handler does not take his/her proportionate amount, such amount shall remain in the inventory reserve.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) will allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities.

However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that will generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the tart cherry marketing order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. A majority of the producers and handlers are considered small entities under SBA's standards.

Board and subcommittee meetings are widely publicized in advance and are held in a location central to the production area. The meetings are open to all industry members (including small business entities) and other interested persons who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Thus, Board recommendations can be considered to represent the interests of small business entities in the industry.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1995/96 through 1999/00, approximately 91 percent of the u.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the united States devoted to tart cherry production has been trending downward. In the ten-year period, 1987/88 through 1997/98, the tart cherry area decreased from 50, 050 acres, to less than 40,000 acres. In 1999/00, approximately (90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah, and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999/00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

The 2001 crop is the second largest ever harvested in the United States at 366.3 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most start cherries are sold to food service outlets and to consumers as pie filing; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the ''marketing margin.''

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies are one of the most pronounced for any agricultural commodity in the United States. In addition, since tart cherries are processed either into cans or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries is rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages. These restricted percentages are only applied to states or districts with a 3-year average of production greater than 15 million pounds. Currently, only the three districts in Michigan, New York, and Washington are subject to restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is over-supplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers' receive for their crop is largely determined by the total production volume and carrying inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry results in decreased shipments to primary markets. Without volume control the primary markets (domestic) will likely be over-supplied, resulting in low grower prices.

To assess the impact that volume control has on the prices growers receive for their product, an econometric model has been developed. The model provides a way to see what impacts volume control may have on grower prices. The three districts in Michigan, New York, and Washington are the only restricted areas for this crop year and their combined total production is 336 million pounds. A 41 percent restriction means 198 million pounds is available to be shipped to primary markets from these three states. Production levels of 2 million pounds for Oregon, 4 million pounds for Pennsylvania, 12 million pounds for Utah, and 13 million pounds for Wisconsin results in an additional 31 million pounds available for primary market shipments.

In addition, USDA requires a 10 percent release from reserves as a market growth factor. This results in an additional 22 million pounds being available for the primary market. The 198 million pounds from Michigan, New York, and Washington, the 31 million pounds from the other producing states, and the 22 million pound release gives a total of 251 million pounds being available for the primary markets.

The econometric model is used to estimate grower prices with and without regulation. Without volume controls, the estimated grower price would be approximately $0.10 per pound. With volume controls, the estimated grower price would increase to approximately $0.15 per pound.

The use of volume controls is estimated to have a positive impact on grower's total revenues. Without regulation, growers' total revenues from processed cherries are estimated to be $36.6 million in 2001–02. In this scenario, production is 366 million pounds and price, without regulation, is estimated to be $0.10 per pound. With regulation, growers' revenues from processed cherries are estimated to be $46.5 million. In this scenario, 251 million pounds are available for the primary markets with an estimated price of $0.15 per pound. Over the past several seasons, growers received approximately $0.10 cents for restricted (diverted) cherries.

The results of econometric analysis are subject to some level of uncertainty. As long as grower prices are greater than $0.11 per pound, then growers' are better off with the regulation. With a price of $0.11 per pound, the estimated revenues under no regulation will be similar to the revenues with a 41 percent restricted regulation.

It is concluded that the 41 percent volume control will not unduly burden producers, particularly smaller growers. The 41 percent restriction is only applied to the growers in Michigan, New York, and Washington. The growers in the other 4 states covered under the marketing order will benefit from this restriction. Michigan, New York, and Washington produced over 91 percent of the tart cherry crop during the 2001/02 crop year.

Recent grower prices have been as high as $0.21 per pound. At current production levels, the cost of production is reported to be $0.25 per pound. Thus, the estimated $0.15 per pound received by growers remains below the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The econometric model shows for every 1 million-pound increase in carrying inventories, a decrease in grower prices of $0.0029 per pound occurs. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of over-supplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

In discussing the possibility of marketing percentages for the 2001–2002 crop year, the Board considered the following factors contained in the marketing policy: (1) The estimated total production of tart cherries; (2) the estimated size of the crop to be handled; (3) the expected general quality of such cherry production; (4) the expected carryover as of July 1 of canned and frozen cherries and other cherry products; (5) the expected demand conditions for cherries in different market segments; (6) supplies of competing commodities; (7) an analysis of economic factors having a bearing on the marketing of cherries; (8) the estimated tonnage held by handlers in primary or secondary inventory reserves; and (9) any estimated release of primary or secondary inventory reserve cherries during the crop year.

The Board's review of the factors resulted in the computation and announcement in October 2001 of the free and restricted percentages (59 percent free and 41 percent restricted).

A positive factor for the cherry industry this year is the unusually large USDA purchases of cherries during this crop year. These USDA sales include a significant amount of frozen cherries and large quantities of dried cherries.

One alternative to this action will be not to have volume regulation this season. Board members stated that no volume regulation will be detrimental to the tart cherry industry due to the size of the 2001–2002 crop. Returns to growers would not cover their costs of production for this season which might cause some to go out of business.

As mentioned earlier, the Department's ''Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders'' specify that 110 percent of recent years' sales should be made available to primary markets each season before recommendations for volume regulation are approved. The quantity available under this rule is 110 percent of the quantity shipped in the prior three years.

The free and restricted percentages established by this rule release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts and all producers by allowing them to better anticipate the revenues their tart cherries will generate.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this regulation.

While the benefits resulting from this rulemaking are difficult to quantify, the stabilizing effects of the volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the information collection and recordkeeping requirements have been previously approved by OMB and assigned OMB Number 0581–0177.

There are some reporting, recordkeeping, and other compliance requirements under the marketing order. The reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical

data for maintenance of the program. The forms require information which is readily available from handler records and which can be provided without data processing equipment or trained statistical staff. As with other, similar marketing order programs, reports and forms are periodically studied to reduce or eliminate duplicate information collection burdens by industry and public sector agencies. This rule does not change those requirements.

A proposed rule concerning this action was published in the **Federal Register** on March 15, 2002. Copies of the rule were mailed by the board's staff to all Board members and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided a 15-day comment period which ended on April 1, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: *http//www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT SECTION.**

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are aware of this action and are already marketing tart cherries from the 2001–2002 crop. Further, this action was recommended at a public meeting and a fifteen day comment period was provided for public input. No comments were received.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 930.253 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 930.253 Final free and restricted percentages for the 2001–2002 crop year.

The final percentages for tart cherries handled by handlers during the crop year beginning on July 1, 2001, which shall be free and restricted, respectively, are designated as follows: Free percentage, 59 percent and restricted percentage, 41 percent.

Dated: April 23, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–10537 Filed 4–29–02; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[CN–01–007]

Cotton Research and Promotion Program: Procedures for Conduct of Sign-up Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule will amend the rules and regulations regarding the procedures for the conduct of a sign-up period for eligible cotton producers and importers to request a continuance referendum on the 1991 amendments to the Cotton Research and Promotion Order (Order) provided for in the Cotton Research and Promotion Act (Act) amendments of 1990. The amendments will update various dates, name changes, addresses, and make other administrative changes.

EFFECTIVE DATE: May 1 2002.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Ave., SW., Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or email at *whitney.rick@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Cotton Research and Promotion Act (7 U.S.C. 2101–2118) provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 12 of the Act, any person subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted there from. Such person is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the District Court of the United States in any district in which the person is an inhabitant, or has his or her principal place of business, has jurisdiction to review the USDA's ruling, provided a complaint is filed within 20 days from the date of the entry of ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic effect of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities.

There are currently approximately 30,000 producers, and approximately 10,000 importers that are subject to the order. The majority of these producers and importers are small businesses under the criteria established by the Small Business Administration.

Only those eligible persons who are in favor of conducting a referendum would need to participate in the sign-up period. Of the 46,220 total valid ballots received in the 1991 referendum, 27,879, or 60 percent, favored the amendments to the Order, and 18,341, or 40 percent, opposed the amendments to the Order. This rule will provide to those persons who are not in favor of the continuance of the Order

amendments an opportunity to request a continuance referendum.

The eligibility and participation requirements for producers and importers are substantially the same as the rules that established the eligibility and participation requirements for the 1991 referendum, and for the 1997 sign-up period. The January 15 through April 14, 1997 sign-up period did not generate the required number of signatures to hold another referendum. These amendments in this action will update various dates, name changes, addresses and make other miscellaneous changes. However, proxy or power of attorney participation would be prohibited.

The sign-up procedures will not impose a substantial burden or have a significant impact on persons subject to the Order, because participation is not mandatory, not all persons subject to the Order are expected to participate, and USDA will determine producer and importer eligibility. The information collection requirements under the Paperwork Reduction Act are minimal.

Paperwork Reduction Act

The information collections in this rule will be carried out under the Office of Management and Budget (OMB) Control Number 0581–0093. This rule will not add to the overall burden currently approved by OMB and assigned OMB Control Number 0581–0093 under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). This OMB Control Number is referenced in Section 1205.541 of the regulations.

Background

The 1991 amendments to the Cotton Research and Promotion Order (7 CFR 1205 *et seq.*) were implemented following the July 1991 referendum. The amendments were provided for in the Cotton Research and Promotion Act (7 U.S.C. 2101–2118) amendments of 1990. These amendments provided for: (1) Importer representation on the Cotton Board by an appropriate number of persons, to be determined by USDA, who import cotton or cotton products into the U.S., and whom USDA selects from nominations submitted by importer organizations certified by USDA; (2) assessments levied on imported cotton and cotton products at a rate determined in the same manner as for U.S. cotton; (3) increasing the amount USDA can be reimbursed for the conduct of a referendum from $200,000 to $300,000; (4) reimbursing government agencies that assist in administering the collection of assessments on imported cotton and cotton products; and (5) terminating the right of producers to demand a refund of assessments.

On January 14, 2002, USDA issued a determination based on its review, (67 FR 1714), not to conduct a referendum regarding the 1991 amendments to the Order. However, the Act provides that USDA shall nevertheless conduct a referendum at the request of 10 percent or more of the total number of eligible producers and importers that voted in the most recent referendum. The Act provides for a sign-up period during which eligible cotton producers and importers may request that USDA conduct a referendum on continuation of the 1991 amendments to the Order. Accordingly, USDA will provide all eligible Upland cotton producers and importers an opportunity to request a continuance referendum regarding the 1991 amendments to the Order.

The sign-up period will be provided for all eligible producers and importers. Eligible cotton producers would be provided the opportunity to sign-up to request a continuance referendum in person at the county FSA office where their farm is located. If the producers' land is in more than one county, the producer shall sign-up at the county office where FSA administratively maintains and processes the producer's farm records. Producers who choose not to visit the county FSA office in person may request a sign-up form from the same office.

USDA will mail sign-up information, including a written request form, to all known, eligible, cotton importers. Importers who favor the conduct of a continuance referendum would return their signed request forms to USDA, FSA, ORAS, Attention: Phil Brockman, PO Box 23278, Washington, DC 20026–3278.

Importers who do not receive a request form in the mail by June 3, 2002, and who meet the eligibility requirements to participate in the sign-up, may submit a written, signed, request for a continuance referendum. Such request must be accompanied by a copy of the U.S. Customs form 7501 showing payment of a cotton assessment for calendar year 2001. Requests and supporting documentation must be mailed to USDA, FSA, ORAS, Attention: Phil Brockman, PO Box 23278, Washington, DC 20026–3278.

The sign-up period will be from June 3, 2002 through August 30, 2002. Producer and importer forms shall only be counted if received by USDA during the stated sign-up period.

Section 8(c)2 of the Act provides that if USDA determines, based on the results of the sign-up, that 10 percent or more of the total number of eligible producers and importers that voted in the most recent 1991 referendum (i.e., 4,622) request a continuance referendum on the 1991 amendments, a referendum will be held within 12 months after the end of the sign-up period. In counting such requests, however, not more than 20 percent may be from producers from any one state or from importers of cotton. For example, when counting the requests, the AMS Cotton Program would determine the total number of valid requests from all cotton-producing states and from importers. Not more than 20 percent of the total requests will be counted from any one state or from importers toward reaching the 10 percent for 4,622 total signatures required to call for a referendum. If USDA determines that 10 percent or more of the number of producers and importers who voted in the most recent referendum favor a continuance referendum, a referendum will be held.

This rule amends the procedures for the conduct of the current sign-up period. The current rules and regulations provide for sections on definitions, supervision of the sign-up period, eligibility, participation in the sign-up period, counting requests, reporting results and instructions and forms. The Administrator designated all divisions in AMS as programs on September 18, 1997. Hence, this rule has name, position title, address changes as well as other miscellaneous changes.

The term Cotton Division is changed to Cotton Program. The term Director is replaced by Deputy Administrator. In § 1205.18 the term Producer is further defined to ensure that all producers that planted cotton during 2001 will be eligible to participate in the sign-up period. In §§ 1205.12 and 1205.26 the words *de minimis* assessment have been replaced with similar meaning language. In §§ 1205.20, 1205.26, and 1205.27 calendar year 1995 would change to calendar year 2001. In § 1205.26 the term limited partnership has been added. In §§ 1205.27, 1205.28, and 1205.29 sign-up period conduct dates, FSA reporting dates, and mailing addresses have been updated. In § 1205.26 a new subsection (g) is added to prohibit proxy or power of attorney participation. Section 1205.27 (c) that addresses producer participation in the sign-up period, is revised to reflect current Farm Service Agency procedures.

A proposed rule with a request for comments was published in the **Federal Register** on March 18, 2002 (67 FR 11947). Two comments were received in response to the proposal. The first

comment was from a trade association that represents importers. The commenter requested that USDA take steps to ensure that the notice of sign-up be received by the appropriate person for each importer, and that each importer know what the cotton assessment is and how much it paid.

USDA is not making any changes in response to this comment. USDA will mail a notice of sign-up to each importer that appears on the records of the United States Customs Service as having paid an assessment on cotton and products containing cotton at the time of import. Such records do not reflect a person's name within an importer organization that has been assigned duties associated with the Cotton Research and Promotion Act (Act). It is the responsibility of each importer to ensure that the notice of sign-up is routed to the person within the organization who has been assigned such duties. Moreover, it is also the responsibility of each importer to know what the cotton assessment is and how much it paid at the time of import. USDA will include a cover letter with each notice of sign-up it mails to importers. The letter will advise each importer of the opportunity to request a referendum on continuation of the 1990 amendments to the Act, enumerate what the amendments are, advise each importer where the enclosed form to request a referendum should be mailed, and the date by which USDA must receive the form in order for it to be counted.

The second comment was received by USDA's Farm Service Agency (FSA). FSA will be conducting the sign-up process for USDA. It requested minor changes in order to help facilitate the sign-up process, and correct inaccurate references to FSA officials.

Accordingly, the following changes are being made in this final rule. The reporting dates in paragraph (c) of § 1205.29 for state FSA offices and ORAS are amended to allow sufficient time for each office to report the results of the sign-up. Specifically, the reporting date for state FSA offices is changed from September 10, 2002 to September 17, 2002. The reporting date for ORAS is changed from September 17, 2002 to September 24, 2002. We also are amending the references in the supplementary information and regulatory text to FSA official William A. Brown. In § 1205.27(b) FSA official Phil Brockman will be substituted for Mr. Brown. Section 1205.28 incorrectly referred an FSA ORAS official as the Deputy Administrator. We are amending this section by replacing Deputy Administrator with Director. Finally, the supplementary information stated that producers could request a sign-up form by mail in lieu of personally appearing at their county FSA office. In the interest of clarity, producers may also request a sign-up form in any other manner.

Pursuant to 5 U.S.C. 533, it is found that good cause exists for not postponing the effective date of this rule until thirty-days after publication in the **Federal Register** because: (1) The Department has determined that June 3 through August 30, 2002, are the preferable dates of the sign-up period; (2) is consistent with the intent of the Act; (3) interested persons have been provided an opportunity to submit written comments concerning the amendments to the sign-up procedures; and (4) the amendments merely update various dates, name changes, addresses and make other miscellaneous. Eligibility and participation requirements are substantially the same that were used in previous referenda and a sign-up period.

This rule amends the subpart to established procedures for use during the sign-up period, and these procedures will be in effect only for the duration of the sign-up period. Accordingly, this rule is adopted as final with the following changes.

List of Subjects in 7 CFR Part 1205

Advertising, Agricultural research, Cotton, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 1205 is amended as follows:

PART 1205—COTTON RESEARCH AND PROMOTION

1. The authority citation for part 1205 continues to read as follows:

Authority: 7 U.S.C. 2101–2118.

2. In § 1205.12, the last sentence is revised to read as follows:

§ 1205.12 Cotton.

* * * The term *cotton* does not include imported cotton for which the assessment is less than the value of $2.00 per line item entry as established by regulations.

3. Section 1205.18 is revised to read as follows:

§ 1205.18 Producer.

The term *producer* means any person who shares in a cotton crop, or in the proceeds thereof, as an owner of the farm, cash tenant, landlord of a share tenant, share tenant, or sharecropper, that planted the cotton during the representative period.

4. Section 1205.20 is revised to read as follows:

§ 1205.20 Representative period.

The term *representative period* means the 2001 calendar year.

5. In § 1205.26, paragraphs (a)(1), (a)(2), and (d) are revised and a new paragraph (g) is added to read as follows:

§ 1205.26 Eligibility.

* * * * *

(a) * * *

(1) Any person who was engaged in the production of Upland cotton during calendar year 2001; and

(2) Any person who was an importer of Upland cotton and imported Upland cotton in excess of the value of $2.00 per line item entry during calendar year 2001.

* * * * *

(d) An officer or authorized representative of a qualified corporation, association, or limited partnership may submit a request on behalf of that corporation, association, or limited partnership.

* * * * *

(g) Participation in the sign-up by proxy or power of attorney is not authorized.

6. Section 1205.27 is revised to read as follows:

§ 1205.27 Participation in the sign-up period.

The sign-up period will be from June 3, 2002, through August 30, 2002. Those persons who favor the conduct of a continuance referendum and who wish to request that USDA conduct such a referendum may do so by submitting such request in accordance with this section. All requests must be received by the appropriate USDA office by August 30, 2002.

(a) Before the sign-up period begins, FSA shall establish a list of known, eligible, Upland cotton producers in the county that it serves during the representative period, and shall also establish a list of known, eligible Upland cotton importers.

(b) Before the start of the sign-up period, USDA shall mail a request form to each known, eligible, cotton importer. Importers who wish to request a referendum and who do not receive a request form in the mail by June 3, 2002, may participate in the sign-up period by submitting a signed, written request for a continuance referendum, along with a copy of a U.S. Customs form 7501 showing payment of a cotton assessment for calendar year 2001. Importers must

submit their requests and supporting documents to USDA, FSA, ORAS, Attention: Phil Brockman, PO Box 23278, Washington, DC 20026–3278. All requests and supporting documents must be received by the appropriate FSA office by August 30, 2002.

(c) Each person on the county FSA office lists may participate in the sign-up period. Eligible producers must date and sign their name on the ''County FSA Office Sign-up Sheet.'' A person whose name does not appear on the county FSA office list may participate in the sign-up period. Such person must be identified on FSA–578 during the representative period or provide documentation that demonstrates that the person was a cotton producer during the representative period. Cotton producers not listed on the FSA–578 shall submit at least one sales receipt for cotton they planted during the representative period. Cotton producers must make requests to the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make request at the county office where FSA administratively maintains and processes the producer's farm records. It is the responsibility of the person to provide the information needed by the county FSA office to determine eligibility. It is not the responsibility of the county FSA office to obtain this information. If any person whose name does not appear on the county FSA office list fails to provide at least one sales receipt for the cotton they produced during the representative period, the county FSA office shall determine that such person is ineligible to participate in the sign-up period, and shall note ineligible in the remarks section next to the person's name on the county FSA office sign-up sheet. In lieu of personally appearing at a county FSA office, eligible producers may request a sign-up form from the county FSA office where the producer's farm is located. If the producer's land is in more than one county, the producer shall make the request for the sign-up form at the county office where FSA administratively maintains and processes the producer's farm records. Such request must be accompanied by a copy of at least one sales receipt for cotton they produced during the representative period. The appropriate FSA office must receive all completed forms and supporting documentation by August 30, 2002.

7. In § 1205.28, the first sentence is revised to read as follows:

§ 1205.28 Counting.

County FSA offices and FSA, Director for Operations Review and Analysis Staff (ORAS), shall begin counting requests no later than September 3, 2002. * * *

8. Section 1205.29 is revised to read as follows:

§ 1205.29 Reporting results.

(a) Each county FSA office shall prepare and transmit to the state FSA office, by September 10, 2002, a written report of the number of eligible producers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(b) ORAS shall prepare, by September 10, 2002, a written report of the number of eligible importers who requested the conduct of a referendum, and the number of ineligible persons who made requests.

(c) Each state FSA office shall, by September 17, 2002, forward all county reports to ORAS. By September 24, 2002, ORAS shall forward its report of the total number of eligible producers and importers that requested a continuance referendum, through the sign-up period, to the Deputy Administrator, Cotton Program, AMS, Stop 0224, 1400 Independence Ave., SW, Washington, DC 20250–0224.

(d) The Chief of the Research and Promotion Staff, Cotton Program, shall prepare a report of the requests received, including the number of eligible persons who requested the conduct of a referendum, and the number of ineligible persons who made requests, to the Deputy Administrator of the Cotton Program, and shall maintain one copy of the report where it will be available for public inspection for a period of 5 years following the end of the sign-up period.

(e) The Deputy Administrator of the Cotton Program shall prepare and submit to the Secretary a report of the results of the sign-up period. The Secretary will conduct a referendum if requested by 10 percent or more of the number of cotton producers and importers voting in the most recent (July 1991) referendum, but not more than 20 percent of the total requests counted toward the 10 percent figure may be from producers in any one state or from importers of cotton. The Secretary shall announce the results of the sign-up period in a separate notice in the **Federal Register**.

Dated: April 25, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–10676 Filed 4–26–02; 11:17 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–24]

Modification of Class E Airspace; Daggett, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Daggett, CA. The establishment of an Area navigation (RNAV) Global Positing System (GPS) Standard Instrument Approach Procedure (SIAP) RNAV (GPS) Runway (RWY) 22 SIAP and a RNAV (GPS) RWY 26 SIAP to Daggett Airport, Barstow-Daggett Airport, CA has made this action necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the RNAV (GPS) RWY 22 SIAP and RNAV (GPS) 26 SIAP to Barstow-Daggett Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules operations at Barstow-Daggett Airport, Daggett, CA.

EFFECTIVE DATE: 0901 UTC June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 1500 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725—6611.

SUPPLEMENTARY INFORMATION:

History

On February 6, 2002, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Daggett, CA (67 FR 5528). Additional controlled airspace extending upward from 700 feet or more above the surface is needed to contain aircraft executing the RNAV (GPS) RWY 22 SIAP and RNAV (GPS) 26 SIAP to Barstow-Daggett Airport. This action will provide adequate controlled airspace for aircraft executing the RNAV (GPS) RWY

22 SIAP and RNAV (GPS) 26 SIAP to Barstow-Daggett Airport, Daggett, CA.

Interested parties were invited to participate in this rulemaking, proceeding by submitting written comments on the proposed to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Daggett, CA. The establishment of a RNAV (GPS) RWY 22 SIAP and RNAV RWY 26 SIAP to Barstow-Daggett Airport has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the RNAV (GPS) RWY 22 SIAP and RNAV (GPS) RWY 26 SIAP to Barstow-Daggett Airport, Daggett, CA.

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 12766; (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; 14 CFR 11.69.]

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

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

* * * * *

AWP CA E5 Daggett, CA [Revised]

Barstow-Daggett Airport, CA
(Lat. 34°51′13″ N, long. 116°47′12″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Barstow-Daggett Airport and within 2.2 miles each side of the 057° bearing from the Barstow-Daggett Airport extending from the 6.5-mile radius to 11.8 miles northeast of the airport.

Issued in Los Angeles, California, on April 8, 2002.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–10499 Filed 4–29–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for an approved new animal drug application (NADA) from Boehringer Ingelheim Vetmedica, Inc., to Alpharma, Inc.

DATES: This rule is effective April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Hwy., St. Joseph, MO 64506–2002, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 39–077 for CSP (chlortetracycline, sulfathiazole, penicillin) 250 and CSP 500 Type A medicated articles to Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024. Accordingly, the agency is amending the regulations in 21 CFR 558.155 to reflect the change of sponsor.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.155 [Amended]

1. Section 558.155 *Chlortetracycline, sulfathiazole, penicillin* is amended in paragraphs (a)(1) and (a)(2) by removing ''Nos. 000010 and 046573'' and by adding in its place ''No. 046573''.

Dated: February 22, 2002.

Claire M. Lathers,

Director, Office of New Animal Drugs, Center for Veterinary Medicine.

[FR Doc. 02–10511 Filed 4–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. 99P–1864]

Orthopedic Devices: Reclassification of the Hip Joint Metal/Polymer Constrained Cemented or Uncemented Prosthesis

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying the hip joint metal/polymer constrained cemented or uncemented prosthesis intended to replace a hip joint from class III (premarket approval) to class II (special controls). FDA is also

identifying the guidance document entitled ''Class II Special Controls Guidance Document: Hip Joint Metal/ Polymer Constrained Cemented or Uncemented Prosthesis'' as the special control that the agency believes will reasonably ensure the safety and effectiveness of the device. This reclassification is being undertaken based on new information regarding the device contained in a reclassification petition submitted by the Orthopedic Surgical Manufacturers Association (OSMA), under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 Amendments), the Safe Medical Devices Act of 1990 (SMDA), and the Food and Drug Administration Moderization Act of 1997 (FDAMA). FDA is also revising the device identification to accurately describe the device.

DATES: This regulation is effective May 30, 2002.

FOR FURTHER INFORMATION CONTACT: John S. Goode, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 6, 2001 (66 FR 46563), FDA published a proposed rule to reclassify the hip joint metal/polymer constrained cemented or uncemented prosthesis from class III to class II based on new information respecting the device. FDA identified the guidance document entitled ''Class II Special Controls Guidance: Hip Joint Metal/Polymer Constrained Cemented or Uncemented Prosthesis'' as the special control capable of providing reasonable assurance of safety and effectiveness for the device.

Interested persons were given until December 5, 2001, to comment on the proposed rule. FDA received three comments. Two comments commended FDA's proposal to reclassify these devices and agreed that the guidance proposed as the special control was adequate to provide reasonable assurance of the safety and effectiveness of the device.

One comment stated that FDA's proposed special control was inadequate to protect against certain types of device failure, specifically shell-bone interface failure that may occur after implantation of this highly constrained device. The comment stated that this risk to health could only be addressed through a clinical testing requirement in a premarket approval application. The comment stated that the proposed rule was legally and procedurally flawed because FDA failed to address this specific risk to health in the proposed rule.

FDA disagrees with the comment. FDA agrees that shell-bone interface failure may occur after implantation of the device. FDA notes that the Orthopedic and Rehabilitation Devices Panel (the Panel) discussed this specific risk to health at the Panel meeting held on November 4, 1999, that was cited in the September 6, 2001, proposed rule to reclassify the device. Their recommendation to reclassify the device from class III into class II was made in full awareness of this risk to health because the Panel believed that this risk to health could be controlled through implementation of special controls. Although clinical trials were discussed at the meeting, the Panel did not recommend that clinical trials be a special control to reasonably assure the safety and effectiveness of this device. The agency concurred with the Panel's recommendation. The ''Risks to Health'' section of the proposed rule included a discussion of possible revision and of pain and/or loss of function due to a variety of causes, including device failure. The agency believes that discussion of device failure, as well as discussion of device failure in the draft guidance, logically included device failures that were the result of problems with the shell-bone interface. Although FDA did not specifically state that the first bulleted precaution statement in the draft guidance document was intended to address the risk of this specific device failure, the agency believes that the scope of the precaution statement in the draft guidance document did cover this risk. In order to provide additional clarity, FDA has revised this precaution statement in the final guidance document. Because the agency believes its proposed rule and draft guidance raised the concerns associated with this risk and because the final guidance includes further clarification, FDA does not agree that the proposed rule was legally or procedurally flawed.

II. FDA's Conclusion

Based on a review of the available information referenced in the preamble to the proposed rule and placed on file in FDA's Dockets Management Branch, FDA concludes that the special controls, in conjunction with general controls, provide reasonable assurance of the safety and effectiveness of this device. The agency is also revising the device identification to accurately describe the currently marketed device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of the guidance document.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Enforcement Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this device from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act (21 U.S.C. 360e). Moreover, compliance with special controls for these devices will not impose significant new costs on affected manufacturers because most of these devices already comply with the special controls. Because reclassification will reduce regulatory costs with respect to these devices, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of

$100 million or more on either the private sector or State, local, or tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

V. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule does not contain information collection provisions that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 888 be amended as follows:

PART 888—ORTHOPEDIC DEVICES

1. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 888.3310 is revised to read as follows:

§ 888.3310 Hip joint metal/polymer constrained cemented or uncemented prosthesis.

(a) *Identification.* A hip joint metal/polymer constrained cemented or uncemented prosthesis is a device intended to be implanted to replace a hip joint. The device prevents dislocation in more than one anatomic plane and has components that are linked together. This generic type of device includes prostheses that have a femoral component made of alloys, such as cobalt-chromium-molybdenum, and an acetabular component made of ultra-high-molecular-weight polyethylene with or without a metal shell, made of alloys, such as cobalt-chromium-molybdenum and titanium alloys. This generic type of device is intended for use with or without bone cement (§ 888.3027).

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance: Hip Joint Metal/Polymer Constrained Cemented or Uncemented Prosthesis.''

Dated: April 15, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–10509 Filed 4–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–225–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Kentucky regulatory program (the ''Kentucky program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky is proposing revisions to the Kentucky Revised Statute (KRS) 350.085(6) to reaffirm, with some modifications, the circumstances under which the regulatory authority may not issue a permit, based upon ownership and control of an operation with an unabated violation. This rule addresses the permit block provisions. The remaining provision will be addressed in a future rulemaking (KY–234–FOR).

EFFECTIVE DATE: April 30, 2002.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Field Office Director; Telephone: (859) 260–8400; E-mail: *bkovacic@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act ***; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982 **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated May 9, 2000 (administrative record no. KY–1473), Kentucky sent us an amendment to its approved SMCRA regulatory program. The amendment, which includes only changes that the Commonwealth is making on its own initiative, concerns permit blocking, easements of necessity, and revisions to KRS 350.445(3) to address roads above highwalls.

In this rulemaking, we are addressing only the permit block provisions. We announced our decision on the easement of necessity provision in a rule published on June 20, 2001 (66 FR 33020). The provision concerning roads above highwalls will be addressed in a future rulemaking.

We announced receipt of the proposed amendment in the May 31, 2000, **Federal Register** (65 FR 34625). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on June 30, 2000. We received several comments from industry groups addressing various parts of the amendment, but only one commenter representing an environmental council addressed the ownership and control provisions.

III. OSM's Findings

As discussed below, we find that the amendment is approvable under the criteria in 30 CFR 732.15 and 732.17, with the proviso that the Commonwealth needs to make certain additional changes in a future rulemaking. Any amendment provisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

Revisions to Kentucky's Statutes That Are Not the Same As the Corresponding Provisions of the Federal Regulations

House Bill 502. Part IX, Item 36(b), provides that the permit block provisions of KRS 350.085(6) apply to either the applicant or any person who owns or controls the applicant who is currently in violation. It requires the Kentucky Natural Resources and Environment Protection Cabinet (cabinet) to continue in effect the current administrative regulations on ownership and control, provided that a due process hearing is afforded at the time the cabinet makes a preliminary determination to impose a permit block. It also requires the cabinet to conditionally issue a permit, permit renewal, or authorization to conduct surface coal mining and reclamation operations if it finds that a direct administrative or judicial appeal is presently being pursued in good faith to contest the validity of the determination of ownership and control linkage. The cabinet must conditionally issue permits if the applicant submits proof, including a settlement agreement, that the violation is being abated to the satisfaction of the issuing State or Federal agency. If the initial judicial appeal affirms the ownership and control linkage, the applicant has 30 days to submit proof that the violation has been or is in the process of being corrected. Finally, it provides that nothing within this new provision shall preclude the applicant from seeking further judicial relief.

The first sentence in Item 36(b)states that ''the permit block provisions of KRS 350.085(6) apply to either the applicant or any person who owns or controls the applicant who is currently in violation.'' In *National Mining Ass'n.* v. *U.S. Dep't. of Interior*, 105 F.3d 691, 693 (D.C. Cir. 1997), the United States Court of Appeals for the District of Columbia Circuit struck down the Federal ownership and control regulations that required ''upstream'' blocking of applicants because of violations incurred by the applicant's owners or controllers. However, section 505(b) of SMCRA allows States to enact laws or regulations that provide for ''more stringent land use and environmental controls and regulations of surface coal mining and reclamation operations'' than are provided for in SMCRA or the implementing Federal regulations. Therefore, to the extent that the Kentucky provision may be read as authorizing upstream permit blocking, it is not inconsistent with SMCRA. For this reason, we are approving the first sentence of Item 36(b) in Part IX of H.B. 502 as submitted by Kentucky.

Because we previously approved Kentucky's current ownership and control regulations, we also are approving the first portion of the second sentence of Item 36(b), which requires the cabinet to ''continue in effect the current administrative regulations on ownership and control.'' However, as discussed in Part VIII of the preamble to the rule that we published on December 19, 2000 (see 65 FR 79658), at some point in the future, we will evaluate Kentucky's regulations to determine whether any changes are needed for those regulations to remain no less effective than the Federal regulations as revised on December 19, 2000. If we determine that program amendments are necessary, we will notify Kentucky in accordance with 30 CFR 732.17(d).

H.B. 502 conditions the continuation of the current regulations on provision of an opportunity for a due process hearing at the time that the cabinet makes a preliminary determination to impose a permit block. As published on December 19, 2000, the Federal regulations provide that ''[a]ny person who receives a written decision [on a challenge a finding of ownership or control] ***, and who wishes to appeal that decision, must exhaust administrative remedies under the procedures at 43 CFR. 4.1380 through 4.1387 or, when a state is the regulatory authority, the State regulatory authority counterparts, before seeking judicial review.'' 30 CFR 773.28(e);65 FR 79582, 79666, December 19, 2000. Included in a right to appeal is a right to a due process hearing. However, the appeal must be taken from a final, rather than a preliminary decision.

H.B. 502 allows for an additional, earlier due process hearing after a preliminary determination to impose a permit block. This ''pre-deprivation'' hearing is presumably desired because the Kentucky program does not allow for the issuance of a provisional or conditional permit while a preliminary permit block determination is being challenged internally, i.e., prior to any administrative review of a final decision by the regulatory authority. The new Federal ''ownership and control regulations'' do allow for ''provisional'' permit issuances to applicants who are pursuing good faith challenges to all pertinent ownership and control findings. 30 CFR 773.14(b)(3)(i). These challenges include those that are before OSM itself, after an initial OSM determination of an ownership and control link, and prior to a final OSM decision that would be subject to administrative review. It has been our longstanding position that ownership and control challenge procedures provide due process even without allowing for the issuance of a provisional permit. *See* 59 FR 54306, 54312–16 (1994) (Preamble to OSM's Applicant/Violator System Procedures Rule, or ''AVS Procedures Rule''). The AVS Procedures Rule, which contained the previous ownership or control challenge procedures, was upheld in court against all due process challenges. *National Mining Assoc.* v. *Babbitt,* 43 Env't Rep. Cas. (BNA) 1097, 1111–17, (D.D.C. 1996), *appeal docketed,* No. 96–5274 (D.C. Cir.). Nevertheless, OSM chose to allow issuance of provisional permits even during internal agency challenges. Regulatory authorities are not obligated to provide for the issuance of provisional permits, however. Indeed, Kentucky has chosen not to issue provisional permits at the time of a preliminary determination to impose a permit block, but to offer instead the opportunity for a hearing. This hearing should serve to protect the applicant's interest in much the same manner as would the issuance of a provisional permit. Therefore, we find that Kentucky's allowance of a hearing prior to a preliminary permit block determination is no less effective than the Federal requirement to issue a provisional permit during the pendency of an internal challenge of a positive determination of ownership and control. Accordingly, we are approving this provision.

H.B. 502 also requires the cabinet to conditionally issue a permit, permit renewal, or authorization to conduct surface coal mining and reclamation operations if it finds that a direct administrative or judicial appeal is presently being pursued in good faith to contest the validity of the determination of ownership and control linkage. These circumstances are substantively identical to the circumstances under which the Federal regulations at 30 CFR 773.14(b)(3)(ii) require provisional issuance of a permit. Therefore, we are approving this portion of H.B. 502, although we may require further changes at a later date as a result of the evaluation discussed in Part VIII of the

preamble to the Federal rules published on December 19, 2000.

Next, H.B. 502 provides that ''[t]he cabinet shall conditionally issue permits where the applicant submits proof, including a settlement agreement, that the violation is being abated to the satisfaction of the issuing State or Federal agency.'' These circumstances are substantively identical to the circumstances under which the Federal regulations at 30 CFR 773.14(b)(1) require provisional issuance of a permit. Therefore, we are approving this portion of H.B. 502, although we may require further changes at a later date as a result of the evaluation discussed in Part VIII of the preamble to the Federal rules published on December 19, 2000.

H.B. 502 also provides that if the initial judicial appeal affirms the ownership and control linkage, the applicant has 30 days to submit proof that the violation has been or is in the process of being corrected. Nothing in the Federal regulations at 30 CFR part 773 precludes allowance of a 30-day period for an applicant to submit proof that a violation has been or is in the process of being corrected. Therefore, we are approving this section of H.B. 502 because it is not inconsistent with the Federal regulations.

However, the Federal regulations at 30 CFR 773.14(c)(4) require the initiation of proceedings to suspend or rescind an improvidently issued permit where the initial judicial review decision affirms the validity of the violation or the ownership or control listing or finding. Therefore, we may require further changes at a later date as a result of the evaluation discussed in Part VIII of the preamble to the Federal rules published on December 19, 2000. If we determine that program amendments are necessary, we will notify Kentucky in accordance with 30 CFR 732.17(d).

Finally, we find that the portion of H.B. 502 that states that ''nothing within this new provision shall preclude the applicant from seeking further judicial relief'' is not inconsistent with any provision of SMCRA or the Federal regulations. Therefore, we are approving it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (administrative record no. KY–1469), and received several from industry groups. None pertained to HB 502, however. The National Citizens' Coal Law Project, an environmental group, submitted a letter dated June 30, 2000 (administrative record no. KY–1483), supporting the approval of the provisions of HB 502.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kentucky program (administrative record no.KY–1469). We received no comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Kentucky proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. Because none of the proposed amendment provisions relates to historic properties, we did not ask the SHPO and ACHP to comment.

V. OSM's Decision

As discussed in section III of this preamble, we are approving House Bill 502, Part IX, Item 36(b) concerning permit block provisions.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 917, which codify decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately.

Section 503(a) of SMCRA requires that the State's program demonstrate that it has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Kentucky program, we will recognize only the statutes, regulations, and other materials we have approved, together with any consistent implementing policies, directives, and other materials. We will only require Kentucky to enforce approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in

accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) Considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 11, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR part 917 is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended by adding a new entry to the table in chronological order to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
May 9, 2000	April 30, 2002	House Bill 502, Part IX, Subsection 36(b), KRS 350.085(6).

[FR Doc. 02–10517 Filed 4–29–02; 8:45 am]

BILLING CODE 4310–05–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Parts 252 and 257

[Docket No. 2002–5 CARP]

Filing of Claims for Cable and Satellite Royalties

AGENCY: Copyright Office, Library of Congress.

ACTION: Waiver of regulation.

SUMMARY: Due to the continued disruption in the delivery of mail, the Copyright Office of the Library of Congress is announcing alternative methods for the filing of claims to the cable and satellite royalty funds for the year 2001. In order to ensure that their claims are timely received, claimants are encouraged to file their cable and satellite claims electronically, utilizing the special procedures described in this document.

EFFECTIVE DATE: April 30, 2002.

ADDRESSES: If hand delivered, an original and two copies of each claim should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE, Washington, DC 20540 from July 1, 2002 through July 31, 2002. Submissions by electronic mail should be made to the following: for cable claims ''*cableclaims @loc.gov*'' ; for satellite claims ''*satclaims@loc.gov*'' . See **SUPPLEMENTARY INFORMATION** for information about on-line electronic filing through the Copyright Office website. If sent by mail, an original and two copies of each claim should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC. 20024.

FOR FURTHER INFORMATION CONTACT: Tanya Sandros, Senior Attorney or Susan Grimes, CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 111 of the Copyright Act, 17 U.S.C., places a statutory obligation on cable systems who retransmit over-the-air broadcast signals to submit royalty fees to the Copyright Office for such retransmissions. Distribution of the royalty fees is made to copyright owners whose works were embodied in those retransmissions made by cable systems. 17 U.S.C. 111(d)(3). In order to claim eligibility for a distribution of cable royalty fees, a claimant must submit to the Copyright Office a claim during the month of July following the calendar year in which the retransmission took place. 17 U.S.C. 111(d)(4)(A). The regulations governing the content and submission of cable claims are found at 37 CFR part 252.

Likewise, copyright owners whose works were embodied in over-the-air television broadcast signals retransmitted by satellite carriers may seek a distribution of the satellite royalty fees collected by the Copyright Office. 17 U.S.C. 119. Eligibility for satellite royalty fees is predicated upon the submission of a claim in the month of July following the calendar year in which the retransmission took place. 17 U.S.C. 119(b)(4)(A). The regulations governing the content and submission of satellite claims are found at 37 CFR part 257.

For both a cable and a satellite claim, a claim is considered timely filed with the Copyright Office if it is hand delivered to the correct office within the Copyright Office during the month of July, or if it is mailed to the correct address and it bears a July U.S. Postal Service postmark. See 37 CFR 252.4 (cable); 37 CFR 257.4 (satellite). The regulations do not provide for the filing of cable and satellite claims by alternative methods such as electronic submission and, until now, the Office has perceived no need for alternative methods in filing these claims.

Unfortunately, recent events, namely the concerns about anthrax in the United States Postal Service facilities in the District of Columbia, have caused severe disruptions of postal service to the Office since October 17, 2001. See 66 FR 62942 (December 4, 2001) and 66 FR 63267 (December 5, 2001). While mail delivery to the Office has now resumed, it has been sporadic and all incoming mail continues to be diverted to an off-site location for treatment, considerably delaying its delivery. Consequently, in light of these disruptions and delays, the Office is offering and recommending alternative methods for the filing of cable and satellite claims to the 2001 royalty funds. The alternative methods set forth in this Notice apply only to the filing of cable and satellite claims for the 2001 royalties which are due by July 31, 2002, and in no way apply to other filings with the Office.

Whatever method you choose to use in filing your claims for royalties, you are strongly advised to send your claims early in the month of July. Persons submitting claims at the end of the month risk missing the deadline for submission of claims.

This Notice covers only the means by which claims may be accepted as timely filed; all other filing requirements, such as the content of claims, remain unchanged, except as noted herein. See 37 CFR parts 252 (cable) and 257 (satellite).

Acceptable Methods of Filing Cable and Satellite Claims for the Year 2001

Claims to the 2001 cable and satellite royalty funds may be submitted as follows:

a. Hand Delivery

In order to best ensure the timely receipt by the Copyright Office of their cable and satellite claims, the Office encourages claimants who do not file their claims electronically to deliver their claims personally by 5 p.m. E.S.T. during the month of July, 2002, and no later than July 31, 2002, to the Office of the Copyright General Counsel, James Madison Memorial Building, Room 403, First and Independence Avenue, SE, Washington, DC. Private carriers should not be used for such delivery, as packages brought in by private carriers may be subject to treatment at the off-site facility before being delivered to the Office and may be deemed untimely and rejected unless the treated package is received by the Office of the Copyright General Counsel by 5 p.m. E.S.T. on July 31, 2002. Thus, claims should be hand delivered by the claimant or a representative of the claimant (i.e., the claimant's attorney or a member of the attorney's staff).

Claimants hand delivering their claims should note that they must follow all provisions set forth in 37 CFR parts 252 and 257.

b. Electronic Mail Submission

Claimants may submit their claims via electronic mail as file attachments. Cable claims should be sent to ''*cableclaims@loc.gov*''. Satellite claims should be sent to ''*satclaims@loc.gov*''. These electronic mailboxes will not be operational before July 1, 2002. The Office has devised forms for both single and joint cable and satellite claims. The form for cable claims is posted at ''*http:www.copyright.gov/carp/cable/claims.html*''. The form for satellite claims is posted at ''*http:www.copyright.gov/carp/satellite/claims.html*''. These forms will be available at these locations by July 1, 2002. Claimants filing their claims via electronic mail must use these and only these forms, and the forms must be sent in either Adobe Portable Document (''PDF'') format, in Microsoft Word Version 10.0 or earlier, or in WordPerfect 9.0 or earlier. Claims sent as attachments using formats other than those specified in this Notice will not be accepted. Likewise, claims sent as text messages, and not as attachments, will also be rejected.

It is critically important that cable and satellite claims be sent to the correct, separate electronic mail addresses. Claims that are sent to the wrong address (*e.g.* a cable claim sent to ''*satclaims@loc.gov*'') will not be accepted.

When filing claims electronically, all provisions set forth in 37 CFR parts 252 and 257 apply except §§ 252.3(b) and 257.3(b), which require the original signature of the claimant or of the claimant's duly authorized representative on the claim. The Office is waiving this provision for this filing period because at this time the Office is not equipped to receive and process electronic signatures.

Claims filed by electronic mail must be received by the Office no later than 11:59 p.m. E.S.T. on July 31, 2002. Specifically, the electronic message must be received in the Office's server by that time. Any claim received after that time will be considered untimely filed. Claimants will receive an electronic mail message in response stating that the Office has received their submission. Therefore, claimants submitting their claims via electronic mail are strongly encouraged to send their claims no later than July 30, 2002, in order to better ensure timely receipt by the Office and to allow sufficient time to receive the electronic mail message that the submission has been received.

c. On-line Submission

The Office has devised on-line electronic forms for filing both single and joint cable and satellite claims from July 1, 2002 through July 31, 2002. Claimants will be able to access and complete the forms via the Copyright Office website and may submit the forms electronically as provided in the instructions accompanying the forms. Cable forms will be posted on the Office website at ''*http:www.copyright.gov/carp/cable/claims.html*''. Satellite forms will be posted at ''*http:www.copyright.gov/carp/satellite/claims.html*''.

Both cable and satellite on-line forms will be available for use during the month of July. It is critically important to follow the instructions in completing the forms before submitting them to the Office. Claims submitted on the wrong form (e.g. a cable claim submitted on a satellite form) will not be accepted. Claimants filing their claims electronically must use these and only these forms. Claims submitted on-line using forms or formats other than those provided at ''*http:www.copyright.gov/carp/cable/claims.html*'' and ''*http:www.copyright.gov/carp/satellite/claims.html*'' will not be accepted. Claims filed on-line must be received by the Office no later than 11:59 p.m. E.S.T. on July 31, 2002. Specifically, the completed electronic forms must be received in the Office's server by that time. Any claim received after that time will not be considered timely filed. Claimants will receive an electronic mail message in response stating that the Office has received their submission. Therefore, claimants submitting their claims on-line are strongly urged to submit their claim no later than July 30, 2002 in order to better assure timely receipt by the Office and to allow sufficient time to receive the electronic mail message that the submission has been received.

d. By Mail

Sections 252.4(a)(2) and 257.4(a)(2) direct claimants filing their claims by mail to send the claims to the Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Claimants electing to send their claims by mail are encouraged to send their claims by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt in order to provide proof of timely filing, in the event that the claim reaches the Office after the last day in July. In the event there is a question as to whether the claim was deposited with the United States Postal Service during the month of July, the claimant must produce the certified mail receipt (PS Form 3800) which bears a United States Postal Service postmark, indicating an appropriate date.

As noted above, disruption of the mail service and delivery of incoming mail to an off-site decontamination center have considerably reduced the timeliness of receipt of mail by the Copyright Office. It is conceivable, if not likely, that cable and satellite claims mailed to the Office in July may not arrive until many months thereafter. Such delays will hamper the Office's ability to compile a claimant list, and may dramatically affect the Office's ability to make partial distributions of cable and satellite funds not in controversy.[1] Consequently, claimants are strongly urged not to use the mail as a means of filing their claims to the 2001 cable and satellite royalty funds. Those who do use the mail are advised to send their claims early in the month of July. While the Office is not prohibiting the filing of claims by mail, those who do so assume the risk that their claim will not reach the Office in a timely manner, or at all, and/or that the mail, when received by the Office, will be significantly damaged. Claims sent by mail should be addressed in accordance with §§ 252.4(a)(2) and 257.4(a)(2), and the Office again strongly encourages the claimant to send the claim by certified mail return receipt requested, to have the certified mail receipt (PS Form 3800) stamped by the United States Postal Service, and to retain the certified mail receipt, as it constitutes the only acceptable proof of timely filing of the claim. Claims dated only with a business meter that are received by the Office after July 31, 2002, will be rejected as being untimely filed. Claimants who have ignored this rule have had their claims rejected.

When filing claims by this method, claimants must follow all provisions set forth in 37 CFR part 252 for cable claims and part 257 for satellite claims.

Faxes Not Permitted

Although the Copyright Office permitted the submission of 2001 Digital Audio Recording Technology (''DART'') claims via facsimile transmission, the Office has determined that, due to the high volume of cable and satellite claims received by the Office relative to DART claims, it is impractical to permit the faxing of cable and satellite claims. Consequently, any cable or satellite claims received by the Copyright Office via facsimile transmission will not be accepted.

Waiver of Regulation

The regulations governing the filing of cable and satellite claims require ''the original signature of the claimant or of a duly authorized representative of the claimant.'' § 252.3(b) (cable); § 257.3(b) (satellite). This Notice however, waives these provisions as set forth herein solely for the purpose of filing claims to the 2001 cable and satellite royalty funds. The Office is not waiving the statutory deadline for the filing either cable or satellite claims, a deadline the Office has no power to waive. *See, United States* v. *Locke,* 471 U.S. 84, 101 (1985). Thus, claimants are still required to file their claims by July 31, 2002.

Waiver of an agency's rules is ''appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.'' *Northeast Cellular Telephone Company* v. *FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990); see also, *Wait Radio* v. *FCC*, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972). Under ordinary circumstances, the Office is reluctant to waive its regulations. However, the recent disruption in the delivery of the mail constitutes a special-indeed, an extraordinary—circumstance which has forced the Office to deviate from its usual mail processing procedures. Thus, given such uncertainties, the Office believes that the public interest will best be served by waiving, for this filing period only, the requirement that cable and satellite claims bear the original signature of the claimant or of a duly authorized representative of the claimant when, and only when, such claim is filed electronically.

Dated: April 25, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–10618 Filed 4–29–02; 8:45 am]

BILLING CODE 1410–31–P

[1] The Office also notes that some of the mail it has recently received was damaged due to handling and the decontamination process. Damage or destruction of claims sent by mail could adversely affect a claimant's eligibility for cable or satellite royalties.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–B–7428]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1-percent-annual-chance) Flood Elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified Base Flood Elevations for new buildings and their contents.

DATES: These modified Base Flood Elevations are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Director, Federal Insurance and Mitigation Administration, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified Base Flood Elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) *matt.miller@fema.gov.*

SUPPLEMENTARY INFORMATION: The modified Base Flood Elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified Base Flood Elevation determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified Base Flood Elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in Base Flood Elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator, Federal Insurance and Mitigation Administration certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified Base Flood Elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arizona:					
Maricopa	City of El Mirage (00–09–083P).	Jan. 31, 2002, Feb. 7, 2002, *Arizona Republic*.	The Honorable Jose Delgado, Mayor, City of El Mirage, 14405 North Palm Street, El Mirage, Arizona 85335.	Jan. 4, 2002	040041
Maricopa	City of Goodyear (02–09–257P).	Jan. 24, 2002, Jan. 31, 2002, *Arizona Republic*.	The Honorable Bill Arnold, Mayor, City of Goodyear, 119 North Litchfield Road, Goodyear, Arizona 85338.	Jan. 15, 2002	040046
Maricopa	City of Peoria (01–09–1060P).	Mar. 7, 2002, March 14, 2002, *Arizona Republic*.	The Honorable John Keegan, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, Arizona 85345.	June 13, 2002	040050
Maricopa	City of Phoenix (01–09–526P).	Jan. 10, 2002, Jan. 17, 2002, *Arizona Republic*.	The Honorable Skip Rimsza, Mayor, City of Phoenix, 200 Washington Street, 11th Floor, Phoenix, Arizona 85003–1611.	Dec. 12, 2001	040051

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Maricopa	City of Scottsdale (01–09–1199P).	Feb. 28, 2002, Mar. 7, 2002, *Arizona Republic*.	The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 Civic Center Boulevard, Scottsdale, Arizona 85251.	June 5, 2002	045012
Maricopa	City of Surprise (00–09–083P).	Jan. 31, 2002, Feb. 7, 2002, *Arizona Republic*.	The Honorable Joan Shafer, Mayor, City of Surprise, 12425 West Bell Road, Suite D100, Surprise, Arizona 85374.	Jan. 4, 2002	040053
Maricopa	City of Surprise (02–09–165P).	Mar. 7, 2002, Mar. 14, 2002, *Arizona Republic*.	The Honorable Joan Shafer, Mayor, City of Surprise, 12425 West Bell Road, Suite D–100, Surprise, Arizona 85374.	Feb. 19, 2002	040053
Maricopa	Unincorporated Areas (00–09–083P).	Jan. 31, 2002, Feb. 7, 2002, *Arizona Republic*.	The Honorable Janice Brewer, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	Jan. 4, 2002	040037
Maricopa	Unincorporated Areas (01–09–1158P).	Mar. 15, 2002, Mar. 22, 2002, *Arizona Republic*.	The Honorable Janice Brewer, Chairperson, Maricopa County Board of Supervisors, 301 West Jefferson, 10th Floor, Phoenix, Arizona 85003.	Mar. 5, 2002	040037
Pima	City of Tucson (00–09–051P).	Nov. 8, 2001, Nov. 15, 2001, *Arizona Daily Star*.	The Honorable Robert Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726.	Nov. 2, 2001	040076
California:					
Alameda	City of Livermore (01–09–344P).	Feb. 7, 2002, Feb. 14, 2002, *Tri-Valley Herald*.	The Honorable Cathie Brown, Mayor, City of Livermore, 1052 South Livermore Avenue, Livermore, California 94550.	Dec. 19, 2001	060008
Alameda	Unincorporated Areas (01–09–344P).	Jan. 11, 2002, Jan. 18, 2002, *Inter-City Express*.	The Honorable Scott Haggerty, Chairman, Alameda County Board of Supervisors, 1221 Oak Street, Suite 536, Oakland, California 94612.	Dec. 19, 2001	060001
Riverside	Unincorporated Areas (02–09–069P).	Dec. 21, 2001, Dec. 28, 2001, *The Press—Enterprise*.	The Honorable Jim Venable, Chairman, Riverside County Board of Supervisors, 4080 Lemon Street, 14th Floor, Riverside, California 92501.	Nov. 27, 2001	060245
San Diego	City of Escondido (02–09–498X).	Feb. 8, 2002, Feb. 15, 2002, *North County Times*.	The Honorable Lori Holt Pfeiler, Mayor, City of Escondido, 201 North Broadway, Escondido, California 92025.	Feb. 19, 2002	060290
San Diego	City of San Diego (02–09–498X).	Feb. 8, 2002, Feb. 15, 2002, *San Diego Daily Transcript*.	The Honorable Dick Murphy, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.	Feb. 19, 2002	060295
Santa Clara ..	City of Santa Clara (01–09–1106P).	Jan. 24, 2002, Jan. 31, 2002, *San Jose Mercury News*.	The Honorable Judy Nadler, Mayor, City of Santa Clara, 1500 Warburton Avenue, Santa Clara, California 95050.	Jan. 4, 2002	060350
Solano	City of Vacaville (01–09–935P).	Mar. 21, 2002, Mar. 28, 2002, *The Reporter*.	The Honorable David Fleming, Mayor, City of Vacaville, City Hall, 650 Merchant Street, Vacaville, California 95688.	Feb. 21, 2002	060373
Ventura	City of Fillmore (01–09–709P).	Jan. 31, 2002, Feb. 7, 2002, *The Fillmore Gazette*.	The Honorable Donald Gunderson, Mayor, City of Fillmore, Fillmore City Hall, Central Park Plaza, 250 Central Avenue, Fillmore, California 93015–1907.	May 8, 2002	060415
Ventura	Unincorporated Areas (01–09–709P).	Jan. 31, 2002, Feb. 7, 2002, *The Fillmore Gazette*.	The Honorable Frank Schillo, Chairman, Ventura County Board of Supervisors, 800 South Victoria Avenue, Ventura, California 93009.	May 8, 2002	060413
Adams	Unincorporated Areas (00–08–342P).	Oct. 6, 2001, Oct. 24, 2001, Oct. 27, 2001, *Brighton Standard—Blade*.	The Honorable Marty Flaum, Chairman, Adams County Board of Commissioners, 450 South Fourth Avenue, Brighton, Colorado 80601.	Jan. 23, 2002	080001

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Adams	Unincorporated Areas (01–08–416P).	Jan. 23, 2002, Jan. 30, 2002, *Brighton Standard—Blade*.	The Honorable Ted Strickland, Chairman, Adams County Board of Commissioners, 450 South Fourth Avenue, Brighton, Colorado 80601.	Apr. 9, 2002	080001
Adams and Boulder.	City of Broomfield (01–08–416P).	Jan. 2, 2002, Jan. 9, 2002, *Boulder Daily Camera*.	The Honorable William Berens, Mayor, City of Broomfield, One Descombes Drive, Broomfield, Colorado 80020.	Apr. 9, 2002	085073
El Paso	Unincorporated Areas (01–08–226P).	Feb. 6, 2002, Feb. 13, 2002, *El Paso County News*.	Mr. Ed Jones, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Third Floor, Colorado Springs, Colorado 80903–2208.	May 14, 2002	080059
Gilpin	City of Black Hawk (01–08–251P).	Mar. 15, 2002, Mar. 22, 2002, *Weekly Register Call*.	The Honorable Kathryn Ecker, Mayor, City of Black Hawk, P.O. Box 17, Black Hawk, Colorado 80422.	June 20, 2002	080076
Larimer	City of Fort Collins (02–08–045P).	Mar. 21, 2002, Mar. 28, 2002, *Fort Collins Coloradoan*.	The Honorable Ray Martinez, Mayor, City of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522–0580.	Mar. 6, 2002	080102
Larimer	Unincorporated Areas (01–08–404P).	Jan. 3, 2002, Jan. 10, 2002, *Fort Collins Coloradoan*.	The Honorable Kathay Rennels, Chairperson, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522–1190.	Apr. 10, 2002	080101
Hawaii: Hawaii	Hawaii County (01–09–1038P).	Jan. 17, 2002, Jan. 24, 2002, *Hawaii Tribune Herald*.	The Honorable Harry Kim, Mayor, Hawaii County, 25 Aupuni Street, Hilo, Hawaii 96720.	Dec. 27, 2001	155166
Nevada:					
Elko	City of Elko (01–09–621P).	Jan. 31, 2002, Feb. 7, 2002, *Elko Daily Free Press*.	The Honorable Mike Franzoia, Mayor, City of Elko, 1751 College Avenue, Elko, Nevada 89801.	May 8, 2002	320010
Independent	City of Carson (01–09–066P).	Dec. 21, 2001, Dec. 28, 2001, *Nevada Appeal*.	The Honorable Ray Masayko, Mayor, City of Carson City, 201 North Carson Street, Suite 2, Carson City, Nevada 89701.	Nov. 29, 2001	320001
Washoe	City of Reno (01–09–689P).	Jan. 10, 2002, Jan. 17, 2002, *Reno Gazette Journal*.	The Honorable Jeff Griffin, Mayor, City of Reno, P.O. Box 1900, Reno, Nevada 89505–1900.	Dec. 14, 2001	320020
Oklahoma: Oklahoma	City of Edmond (02–06–210P).	Mar. 7, 2002, Mar. 14, 2002, *Edmond Evening Sun*.	The Honorable Sandra Naifeh, Mayor, City of Edmond, P.O. Box 2970, Edmond, Oklahoma 73083–2970.	June 12, 2002	400252
Oregon: Coos	City of Bandon (00–10–382P).	Jan. 2, 2002, Jan. 9, 2002, *Western World*.	The Honorable Brian M. Vick, Mayor, City of Bandon, City Hall, P.O. Box 433, Bandon, Oregon 97411.	Dec. 10, 2001	410043
South Dakota: Pennington	Town of New Underwood (02–08–085P).	Jan. 10, 2002, Jan. 17, 2002, *Rapid City Journal*.	The Honorable Benita White, Mayor, Town of New Underwood, P.O. Box 278, New Underwood, South Dakota 57761.	Dec. 14, 2001	460092
Texas: Collin	City of Plano (01–06–1678P).	Mar. 15, 2002, Mar. 22, 2002, *Plano Star Courier*.	The Honorable Jeran Akers, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Mar. 5, 2002	480140
Virginia:					
Prince William	City of Manassas (01–03–207P).	Mar. 14, 2002, Mar. 21, 2002, *Manassas Journal Messenger*.	The Honorable Marvin L. Gillum, Mayor, City of Manassas, 9027 Center Street, Room 101, Manassas, Virginia 20110.	June 21, 2002	510122
Prince William	Unincorporated Areas (01–03–207P).	Mar. 14, 2002, Mar. 21, 2002, *Manassas Journal Messenger*.	The Honorable Sean Connaughton, Chairman, Prince William County Board of Supervisors, One County Complex Court, Prince William, Virginia 22192.	June 21, 2002	510119
Washington: Mason	Skokomish Indian Tribe (01–10–496P).	Feb. 28, 2002, Mar. 7, 2002, *Shelton Mason County Journal*.	The Honorable Denny Hurtado, Chairman, Skokomish Tribal Council, North 80 Tribal Center Road, Shelton, Washington 98584.	Feb. 7, 2002	530326

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: April 22, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–10558 Filed 4–29–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 02–100, MM Docket Nos. 89–120, 90–195, 91–352, 92–214]

FM Broadcasting Services; Northwye, Cuba, Waynesville, Lake Ozark, and Eldon, Missouri; Brookline, Missouri; Ava, Branson, and Mountain Grove, Missouri; and Columbia, Bourbon, Leasburg, Gerald, Dixon, and Cuba, Missouri

AGENCY: Federal Communications Commission.

ACTION: Final rule; application for review denied.

SUMMARY: The Commission denied an application for review filed by Lake Broadcasting, the former licensee, *inter alia*, of Station KBMX(FM), Eldon, Missouri. The Commission held that the staff properly dismissed as moot Lake's petition for reconsideration in MM Docket 89–120, seeking to upgrade the class of the Eldon station, because the license for Station KBMX(FM), as well as the other stations licensed to Lake or controlled by its principal shareholder, Michael Rice, had been revoked and those actions became final and no longer subject to judicial review. *See* 66 FR 58409 (November 21, 2001).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MM Dockets 89–120, 90–195, 91–352, and 92–214, adopted March 27, 2002, and released April 18, 2002. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Information Center (room CY–A257), 445 12th Street, S.W., Washington, DC 20554. The complete text of this decision may be also purchased from the Commission's copy contractor, Qualex International Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 02–10595 Filed 4–29–02; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 67, No. 83
Tuesday, April 30, 2002

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–115–1]

Imported Fire Ant; Approved Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the imported fire ant regulations to add the insecticide fipronil (Chipco®) to the list of chemicals authorized for the treatment of regulated articles and to provide instructions for its use in soil or potting media and on grass sod. This action would make another authorized treatment available to persons wishing to move containerized plants and commercial grass sod interstate from quarantined areas. We are also proposing to update the regulations by making the rates of application for chlorpyrifos (Dursban®), a currently authorized insecticide, consistent with current product labeling.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 1, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–115–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–115–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 01–115–1'' on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4838.

SUPPLEMENTARY INFORMATION:

Background

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery.

The imported fire ant regulations (7 CFR 301.81 through 301.81–10, referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant. Regulated articles include soil, plants, and sod (§ 301.81–2).

Sections 301.81–4 and 301.81–5 of the regulations provide, among other things, that regulated articles requiring treatment prior to interstate movement must be treated in accordance with the methods and procedures prescribed in the appendix to the subpart, which sets forth the treatment provisions of the ''Imported Fire Ant Program Manual.''

Tests conducted by the Animal and Plant Health Inspection Service's Gulfport Plant Methods Center in Mississippi have demonstrated that the insecticide fipronil (Chipco®), in granular form, is efficacious at variable dosage rates in treating plants in containers and at a total of 0.025 lb a.i./acre (0.01134 kg a.i./acre) for two applications for grass sod to prevent the spread of imported fire ant. On December 4, 2000, fipronil was registered by the U.S. Environmental Protection Agency (EPA) for use against imported fire ant in potting media. On May 25, 2001, it was registered by EPA for use against imported fire ant in commercial grass sod.

Therefore, we are proposing to amend the appendix to the regulations to add the insecticide fipronil (Chipco®) as a treatment option for certain regulated articles requiring treatment against the imported fire ant. Specifically, we would amend the appendix to the regulations by adding:

- Granular fipronil to the list of authorized chemicals (III.B.);
- Granular fipronil as a treatment option for the soil or potting media of plants in containers, or prior to planting, as an alternative to bifenthrin and tefluthrin (III.C.3. and III.C.4.);
- Method F for granular incorporation of fipronil (III.C.3.);
- Fipronil, in III.C.4., under ''Enforcement,'' in regard to a reference to chemical treatments for plants, balled or containerized, that are described in paragraph III.C.3. of the appendix; and
- Granular fipronil as a treatment option for grass sod, as an alternative to chlorpyrifos (III.C.8.).

In addition, we are proposing to amend paragraph III.C.8. by changing the dosage rates for applying chlorpyrifos, a currently approved insecticide, to grass sod so that the rate would be consistent with current product labeling. Currently, under approved treatments for grass sod, the amount and dosage of chlorpyrifos is 4.0 lb (1.8 kg) a.i./acre and 6.0 lb (2.7 kg) a.i./acre with a certification period of 4 weeks and 10 weeks (after the exposure period has been completed), respectively. We would change the amount and dosage of chlorpyrifos to 8.0 lb (3.6 kg) a.i./acre and the certification period to 6 weeks.

Executive Order 12866 and Regulatory Flexibility Act

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

This proposed rule would amend the appendix to the imported fire ant

regulations to allow the use of the insecticide fipronil (Chipco®) against the imported fire ant. Fipronil is registered by the EPA for use against imported fire ant in potting media and commercial grass sod and has been found to be efficacious against the imported fire ant based on testing by the Gulfport Plant Methods Center in Mississippi.

Determining the cost of imported fire ant treatments is complicated because of the variety of insecticides that can be used, varying soil conditions, and the various nursery crops grown. For example, in two surveys conducted by Hall and Holloway (1994 and 1995) of 37 nursery crop growers in Texas—representing over one-half of all nursery crops produced in that State—chemical cost per treatment for imported fire ant control averaged $12.10, with treatment costs making up to 4 percent of their production cost. Almost one-half (i.e., 47 percent) of those growers reported treating for imported fire ant, and most of them reported using more than one insecticide to treat for imported fire ant in their operations (range = 1 to 3; average = 1.5), making the average cost per acre for insecticides to control imported fire ants $18.15 (*i.e.*, 1.5 × $12.10).

Fipronil would be the latest EPA-approved insecticide to be added to the regulations for the treatment of imported fire ant. Other approved insecticides—Pyriproxyfen (Distance ®), Fenoxycarb (Award ®), Hydramethylnon (AMDRO ®), and Bifenthrin (Talstar ®)—cost approximately the same in the bulk market, between $5 per pound and $12 per pound, with each pound treating 17 colonies (*i.e.*, mounds) of imported fire ant. An insecticide's retail price depends on the price charged by its local distributor and may vary from State to State. Although the insecticides generally do not differ greatly in price, at least some consumers can be expected to benefit from the inclusion of fipronil as an alternative treatment.

Affected Entities

Businesses such as nurseries, sod growers, farm equipment dealers, and construction companies that work with regulated articles are the entities most likely to be affected by this proposed rule. This proposed rule would result in a wider selection of treatment options for imported fire ant. The economic effect on affected entities would either be positive, since a wider selection of insecticides will provide greater choice, or would have no effect, if they choose not to use fipronil.

The Regulatory Flexibility Act requires that agencies consider the economic effects of their rules on small businesses. Based on data from the 1997 Census of Agriculture, there were 13,266 nurseries and greenhouses located in areas of the United States quarantined because of imported fire ant, of which 82 to 99 percent were small businesses, according to the U.S. Small Business Administration's criterion of annual sales of less than $750,000.

The addition of fipronil to the imported fire ant regulations would provide the regulated community with a greater selection of treatment options. Thus, it is expected that the economic effect on these businesses would either be positive (a wider selection of insecticides would provide greater choice) or neutral (if they choose not to use fipronil). The majority (i.e., 82 to 99 percent) of firms that may potentially be affected by this proposed rule are small entities.

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

Executive Order 12372

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L.106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In part 301, Subpart—Imported Fire Ant (§§ 301.81 through 301.81–10), the appendix to the subpart would be amended as follows:

a. In paragraph III.B., under the heading INSECTICIDES, by adding ''Fipronil (Chipco®)'' in alphabetical order.

b. By redesignating paragraph III.C.3.d. as paragraph III.C.3.e. and adding a new paragraph III.C.3.d. to read as follows.

c. In newly redesignated paragraph III.C.3.e., by adding a new ''Method F—Granular Incorporation (Fipronil)'' in alphabetical order to read as follows.

d. In paragraph III.C.4., under the heading *Exclusion*, by adding a new entry for *Fipronil*, following the *Tefluthrin* entry, to read as follows.

e. In paragraph III.C.4., under the heading *Enforcement*, the sixth paragraph, second sentence, by removing the words ''or tefluthrin'' and adding the words ''tefluthrin, or fipronil'' in their place.

f. In paragraph III.C.8., by revising the entry for *Material* to read as follows.

APPENDIX TO SUBPART ''IMPORTED FIRE ANT''

III. Regulatory Procedures

* * * * *

C. Approved Treatments.

* * * * *

3. Plants—Balled or in Containers

* * * * *

d. Fipronil: Granular Formulation.

Material: Granular fipronil incorporation into soil or potting media for containerized nursery stock.

Dosage: The amount of granular fipronil needed to achieve a specified dosage varies with the bulk density of the soil or potting media. Follow label directions to calculate the amount of granular fipronil needed to achieve a specified dosage.

Granular fipronil dosage (parts per million)	Certification period (months after treatment)
10 ppm	0–6 months.

Granular fipronil dosage (parts per million)	Certification period (months after treatment)
12 ppm	0–12 months.
15 ppm	0–24 months.
25 ppm	Continuous.

Exposure Period: Containerized nursery stock can be certified for interstate movement from quarantined areas 2 weeks after completion of treatment.

e. * * *

Method F—Granular Incorporation (Fipronil)

Apply fipronil according to the label instructions for granular incorporation. Mix thoroughly to distribute product evenly throughout the soil or potting media. After potting, containers must be watered to the point of saturation.

Precautions: Saturation of the soil or potting media with the granular fipronil is essential. Water that drains from the treatment area, which may contain fipronil, must be disposed of in accordance with State and local laws.

4. Imported-Fire-Ant-Free Nursery Containerized Plants Only

* * * * *

Exclusion

* * * * *

Fipronil

For plants grown on the premises: Treatment of soil or potting media with granular fipronil prior to planting is permitted as an alternative to treatment with granular formulations of bifenthrin or tefluthrin. This treatment reduces the risk of infestation of containers by alate queens flying in from adjacent or nearby infested premises. The dosage rate is variable, determined by the selected certification period, for the granular fipronil.

Apply this treatment according to the label directions.

Mixing must be adequate to blend the required dosage of granular fipronil throughout the entire soil or potting media.

* * * * *

8. Grass Sod

Material

a. Chlorpyrifos.

Material	Amount and dosage of material	Certification period
Chlorpyrifos	8.0 lb (3.6 kg) a.i./acre	6 weeks (after exposure period has been completed).

Exposure Period: 48 hours.

Method

1. Apply a single broadcast application of chlorpyrifos with ground equipment.

2. Immediately after treatment, water the treated areas with at least ½ inch of water.

Chlorpyrifos wettable powder Dursban® 50–WP: Follow label directions for regulatory treatment for IFA.

b. Fipronil.

Material	Amount and dosage of material	Certification period
Fipronil	Dosage per application: 0.0125 lb (0.00567 kg) a.i.acre. Total amount over two applications: 0.025 lb (0.01134 kg) a.i./acre	20 weeks (after exposure period has been completed).

Exposure Period: 30 days from the second application.

Method

1. Apply in two applications approximately 1 week apart for a total of 0.025 lb (0.01134 kg) a.i./acre.

2. Follow label directions for regulatory treatment for IFA.

* * * * *

Done in Washington, DC, this 17th day of April, 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–10109 Filed 4–29–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–73–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 222, 222B, 222U, 230, and 430 helicopters. This proposal would require removing sealant from the forward tooling hole in the right-hand upper fuel enclosure area. This proposal is prompted by the determination that fuel or water could accumulate in the right-hand upper fuel enclosure. The actions specified by this proposed AD are intended to prevent accumulation of fuel in the right-hand upper fuel enclosure area, a fire, and a subsequent forced landing.

DATES: Comments must be received on or before July 1, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001-SW–73-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.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft

Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 2001–SW–73–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2001–SW–73–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 222, 222B, 222U, 230, and 430 helicopters. Transport Canada advises that a condition exists that can result in an accumulation of fuel in the right-hand upper fuel enclosure area.

BHTC has issued:

- Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222–01–89, for Model 222 helicopters, serial numbers (S/N) 47006 through 47089, and Model 222B helicopters, S/N 47131 through 47156;
- ASB No. 222U–01–60, for Model 222U helicopters, S/N 47501 through 47574;
- ASB No. 230–01–20, for Model 230 helicopters, S/N 23001 through 23038; and
- ASB No. 430–01–21, for Model 430 helicopters, S/N 49001 through 49079.

All of the ASB's are dated February 7, 2001. All of these ASB's specify procedures for removing the sealant from the existing forward tooling hole located in the panel assembly to provide enclosure drainage. Transport Canada classified these alert service bulletins as mandatory and issued AD No. CF–2001–22, dated May 24, 2001, to ensure the continued airworthiness of these helicopters in Canada.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopter models of the same type designs registered in the United States. Therefore, the proposed AD would require removing sealant from the forward tooling hole in the right-hand upper fuel enclosure area. The actions would be required to be accomplished in accordance with the alert service bulletins described previously.

The FAA estimates that 151 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $45,300.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bell Helicopter Textron Canada: Docket No. 2001–SW–73–AD.

Applicability: Model 222 helicopters, serial numbers (S/N) 47006 through 47089; Model 222B helicopters, S/N 47131 through 47156; Model 222U helicopters, S/N 47501 through 47574; Model 230 helicopters, S/N 23001 through 23038; and Model 430 helicopters, S/N 49001 through 49079, 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 (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required at the next annual or 100-hour inspection, whichever occurs first, unless accomplished previously.

To prevent accumulation of fuel in the right-hand upper fuel enclosure area, a fire, and a subsequent forced landing, accomplish the following:

(a) Remove the sealant from the forward tooling hole in the right-hand upper fuel enclosure area in accordance with the Accomplishment Instructions in Bell Helicopter Textron Alert Service Bulletin (ASB) No. 222–01–89, for the Model 222 helicopters and Model 222B helicopters; ASB No. 222U–01–60, for the Model 222U helicopters; ASB No. 230–01–20, for the Model 230 helicopters; and ASB No. 430–01–21, for the Model 430 helicopters, all dated February 7, 2001.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, 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, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) 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.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2001–22, dated May 24, 2001.

Issued in Fort Worth, Texas, on April 18, 2002.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–10533 Filed 4–29–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209135–88] and [REG–142299–01]

RIN 1545–BA36 and 1545–AW92

Certain Transfers of Property to Regulated Investment Companies and Real Estate Investment Trusts; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to certain transfers or events that result in a Regulated Investment Company (RIC) or Real Estate Investment Trust (REIT) owning property that has a basis determined by reference to a C corporation's basis in the property.

DATES: The public hearing originally scheduled for Wednesday, May 1, 2002, at 10 a.m is cancelled.

FOR FURTHER INFORMATION CONTACT: Donna Poindexter of the Regulations Unit, Associate Chief Counsel (Income Tax and Accounting), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of public hearing that appeared in the **Federal Register** on Monday, January 14, 2002 (67 FR 1672), announced that a public hearing was scheduled for May 1, 2002, at 10 a.m., in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW, Washington, DC. The subject of the public hearing is proposed regulations under sections 337(d) of the Internal Revenue Code. The public comment period for these proposed regulations expired on April 10, 2002.

The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed as of April 10, 2002; no one has requested to speak. Therefore, the public hearing scheduled for May 1, 2002, is cancelled.

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–10617 Filed 4–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–137–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Pennsylvania regulatory program (the ''Pennsylvania program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Pennsylvania proposes revisions to rules for the licensing of blasters and for the use and handling of explosives. Pennsylvania intends to revise its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and provide additional safeguards.

This document gives the times and locations that the Pennsylvania program and proposed amendments to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4:00 p.m., e.d.t., May 30, 2002. If requested, we will hold a public hearing on the amendment on May 27, 2002. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on May 15, 2002.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Robert McKenzie, Acting Director, Harrisburg Field Office at the address listed below.

You may review copies of the Pennsylvania program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Harrisburg Field Office.

Robert McKenzie, Acting Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036, Email: *bbrock@osmre.gov*.

J. Scott Roberts, Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5103.

FOR FURTHER INFORMATION CONTACT: Robert McKenzie, Telephone: (717) 782–4036. Email: *rmckenz@osmre.gov*

SUPPLEMENTARY INFORMATION:

I.Background on the Pennsylvania Program
II.Description of the Proposed Amendment
III.Public Comment Procedures
IV.Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program

includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act* * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Description of the Proposed Amendment

By letter dated March 1, 2002, Pennsylvania sent us a proposed amendment to its program (administrative record No. PA 878.02) under SMCRA (30 U.S.C. 1201 et seq.). Pennsylvania sent the amendment to include the changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

The provisions of State rules that Pennsylvania proposes to revise and/or add are:

Title 25, Part I, Subpart D, Article IV, Chapter 210, Blasters' License

Sections 210.1–210.6 are reserved. These sections have either been eliminated or their content moved to other sections.

Section 210.11, Definitions. This is a new section that contains definitions of the terms, ''Blaster,'' ''Blaster learner,'' ''Blaster's license,'' ''Demolition and demolition blasting,'' and ''Person.'' The definition of ''blaster learner,'' was formerly at section 210.6.

Section 210.13, General. This section consolidates requirements for possessing and exhibiting a blaster's license that were formerly found in sections 210.5(a), 210.2(e), and 210.4.

Section 210.14, Eligibility requirements. This section provides the requirements a person must possess to be eligible for a blaster's license. It also provides circumstances under which Pennsylvania will not issue or renew a license. This section consolidates requirements formerly found under sections 210.2(a), 210.2(d), and 210.3(a).

Section 210.15, License application. This section describes the forms for the license application and the specific information to be supplied with the application. This section consolidates information formerly found in sections 210.1(d) and 210.1(e).

Section 210.16, Examinations. This section provides that Pennsylvania will conduct examinations for specific types of blasting, and also provides information concerning the application fee. This section consolidates information formerly found in sections 210.1(a), 210.1(b), and 210.2(g).

Section 210.17, Issuance and renewal of licenses. This section provides the circumstances under which a blaster's license is issued, when a blaster's license may be amended, the duration of the license, circumstances under which a license may be renewed, and information regarding a demolition blaster's license. This section consolidates information formerly found in sections 210.2(b), 210.2(c), 210.2(d), and 210.3(a). Section 210.17(d) is a new section that adds a continuing education requirement to renew a blaster's license. Section 210.17(g) is also a new requirement that provides for obtaining a demolition blasting license. In section 210.17(e) the term of the blaster's license has been changed from one year to three years and the fee for a license renewal changed from $3.50 to $30.00.

Section 210.18, Recognition of out-of-State blaster's license. This is a new section that provides the conditions under which Pennsylvania may license a blaster holding a license from another State and the procedures for out-of-State blasters to secure a license in Pennsylvania.

Section 210.19, Suspension, modification and revocation. This section provides the circumstances and procedures under which Pennsylvania may suspend, modify, or revoke a blaster's license. This section provides requirements formerly found in section 210.2(f).

Sections Proposed To Be Eliminated

The following sections were proposed to be eliminated from Chapter 210: Sections 210.1(c); 210.1(f); 210.2(h); and 210.5(d) and (e).

Title 25, Part I, Subpart D, Article IV, Chapter 211, Storage, Handling and Use of Explosives

Subchapter A. General Provisions

Sections 211.1, 211.2, 211.31–211.44, 211.51–211.56, 211.61, 211.62, 211.71–211.76, and 211.81–211.88 have been reserved.

Section 211.101, Definitions. This is a new section that contains definitions for the terms, ''Airblast,'' ''Blast area,'' ''Blast site,'' ''Blaster,'' ''Blaster-in-charge,'' ''Blasting activity,'' ''Building,'' ''Charge weight,'' ''Delay interval,'' ''Detonator,'' ''Explosive,'' ''Flyrock,'' ''Magazine,'' ''Misfire,'' ''Particle velocity,'' ''Peak particle velocity,'' ''Person,'' ''Primer,'' ''Purchase,'' ''Sale or sell,'' ''Scaled distance (Ds),'' ''Stemming,'' ''Structure,'' and ''Utility lines.'' These definitions were formerly found in section 211.2 except for the definition of ''Blaster-in-charge'' which was formerly in section 210.6.

Pennsylvania is proposing to eliminate the following terms and their definitions that were formerly located in section 211.2: ''Establishment,'' ''Explosive Plant,'' ''Factory Building,'' ''Railroad,'' ''Highway,'' ''Barricade,'' ''Department,'' ''Board,'' ''Secretary,'' ''Approved,'' ''Vehicle,'' and ''Actual Distance.''

Section 211.102, Scope. This section defines who and what activities the chapter applies to. Subsection (a) was formerly found in section 210.5(c).

Section 211.103, Enforcement. This section defines the circumstances under which Pennsylvania may issue orders to either implement this chapter or to suspend, modify or revoke a license or permit. This section was formerly found in section 211.36.

Subchapter B. Storage and Classification of Explosives

Section 211.111, Scope. This section indicates that the subchapter applies to the classification and storage of explosives and establishes the requirements for licensing, constructing, siting and maintaining magazines.

Section 211.112, Magazine license and fees. This section defines the procedures for licensing magazines for storage of explosives and also includes the applicable fees. This section is a compilation of requirements formerly found in sections 211.31 and 211.32.

Section 211.113, Application contents. This section describes the information to be included on an application to obtain, renew, modify or transfer a magazine license. These requirements were formerly found in section 211.34.

Section 211.114, Displaying the license. This section requires a license to be conspicuously displayed inside the magazine, if possible, or at the site and adjacent to the magazine for which it applies. This requirement was formerly found in section 211.114.

Section 211.115, Standards for classifying and storing explosives and constructing, maintaining and siting magazines. This section provides that the provisions of 27 CFR part 55, subpart K (relating to storage) are

incorporated in this section by reference. These provisions are used to locate magazines on a site and to determine the type of explosives that can be stored there. This section is a compilation of requirements formerly found in sections 211.32, 211.33, 211.35, 211.43, and 211.61.

Subchapter C. Permits

Section 211.121, General Requirements. This section lists the requirements for obtaining a permit for blasting and the purchase or sale of explosives. This section is a compilation of requirements formerly found in section 211.36.

Section 211.122, Permits to sell explosives. This section identifies the requirements to be met when applying for a permit to sell explosives. This section is a compilation of requirements formerly found in section 211.36.

Section 211.123, Permits to purchase explosives. This section identifies the requirements to be met when applying for a permit to purchase explosives. This section is a compilation of requirements formerly found in section 211.36.

Section 211.124, Blasting activity permits. This section identifies the requirements to be met when applying for a permit to conduct blasting activities.

Section 211.125, Blasting activity permit-by-rule. This section defines the conditions under which a person shall be deemed to have a permit for a blasting activity.

Subchapter D. Records of Disposition of Explosives

Section 211.131, Sales Records. This section provides that sellers shall keep accurate records of every sale of explosives for three years. It also specifies the information needed to be kept during that three year period. The requirements of this section were formerly found at section 211.36.

Section 211.132, Purchase Records. This section provides that purchasers shall keep accurate records of every purchase of explosives for three years. It also specifies the information needed to be kept during that three year period. The requirements of this section were formerly found at section 211.36.

Section 211.133, Blast reports. This section specifies the information that a blaster-in-charge is to provide Pennsylvania in a blast report. It also requires that blast reports be kept a minimum of three years. The requirements of this section were formerly found at section 211.46.

Subchapter E. Transportation of Explosives

Section 211.141, General requirements. This section provides the requirements a blasting activity, purchase or sale permittee must comply with when transporting explosives including unloading and loading of explosives. The requirements of this section were formerly found at sections 211.38 and 211.42.

Subchapter F. Blasting Activities

Section 211.151, Prevention of damage. This is a new section that identifies the types of prohibited blasting damage and requires notification of damage to the Department of Environmental Protection. It also provides technical specifications for designing blasts.

Section 211.152, Control of noxious gases. This is a new section that requires blasts to be conducted so that the gases generated by the blast do not affect the health and safety of individuals. It also provides guidelines for preventing the effects from gases.

Section 211.153, General requirements for handling explosives. This section provides a list of rules necessary for safely handling explosives. The requirements of this section were formerly found at section 211.51.

Section 211.154, Preparing the blast. This section provides a listing of the duties of the blaster-in-charge when preparing a blast. The requirements of this section were formerly found at sections 210.5, 210.6, 211.51, and 211.65.

Section 211.155, Preblast measures. This section provides the duties a blaster-in-charge must complete prior to detonating a blast. The requirements of this section were formerly found at section 211.51.

Section 211.156, Detonating the blast. This section provides that only a blaster-in-charge may detonate a blast and that a blast may be detonated only between sunrise and sunset unless the Department of Environmental Protection authorizes a blast at another time of day. The requirements of this section were formerly found at section 211.51.

Section 211.157, Postblast measures. This section provides the procedures the blaster-in-charge must follow after a blast has been detonated. The requirements of this section were formerly found at sections 211.51 and 211.65.

Section 211.158, Mudcapping. This section provides that mudcapping is allowed only if the blaster-in-charge determines that drilling the material to be blasted would endanger the safety of the workers. If mudcapping is necessary, no more than 10 pounds of explosives shall be used for a blast. The requirements of this section were formerly found at section 211.51.

Section 211.159, Electric detonation. This section describes the measures to be taken to test electric blasting caps and the safety precautions to be taken when using these blasting caps. The requirements of this section were formerly found at section 211.51.

Section 211.160, Nonelectric detonation. This section provides that nonelectric initiation systems must be checked and tested for secure connections in accordance with recommendations of the manufacturer of the system in use.

Section 211.161, Detonating cords. This section provides safety precautions to be followed when using detonating cords. The requirements of this section were formerly found at section 211.51.

Section 211.162, Safety fuse. This section provides safety precautions to be followed when using a safety fuse in blasting. The requirements of this section were formerly found at section 211.51.

Subchapter G. Requirements for Monitoring

Section 211.171, General provisions for monitoring. This section provides conditions for when and under what circumstances airblast and ground monitoring are to be employed. The requirements of this section were formerly found at section 211.45.

Section 211.172, Monitoring instruments. This section provides the specifications monitoring equipment for recording ground vibration must possess. It also provides for calibration standards for such equipment. The requirements of this section were formerly found at section 211.44.

Section 211.173, Monitoring records. This section provides that anyone using a monitoring instrument must be trained in its use. A record of the training is to be maintained and available for review by the Department of Environmental Protection. This section further provides the information that monitoring records must contain.

Subchapter H. Blasting Activities Near Utility Lines

Section 211.181, Scope. This section provides that this subchapter applies to buried or underground utility lines and utility lines making contact with the surface of the ground. The requirements of this section were formerly found at section 211.52.

Section 211.182, General provisions. This section provides the specifications on the design of blasts near utility lines and specifications on how blasts in the vicinity of a utility line are to be conducted. The requirements of this section were formerly found at section 211.52

Sections Proposed To Be Eliminated

The following sections were proposed to be eliminated from Chapter 211: Section 211.1; 211.36(10); 211.37; 211.51(5), (8), (12), (18), (21), (27), (32), (33), (39), and (40); 211.61(3) and (5); 211.62–211.64; 211.71–211.78; and Appendix A.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written comments or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Harrisburg Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: SPATS No. PA–137–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Harrisburg Field Office at (717) 782–4036.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on May 15, 2002. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C.804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 8, 2002.

Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–10516 Filed 4–29–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 60

RIN 2900–AL13

Fisher Houses and Other Temporary Lodging

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to establish requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving VA medical care or Compensation and Pension (C&P) examinations and by family members or other persons accompanying veterans to provide the equivalent of familial support. This is necessary to implement provisions of the Veterans Benefits and Health Care Improvement Act of 2000.

DATES: Comments must be received by VA on or before July 1, 2002.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL13.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Jill E. Manske, Social Work Services (110B), Veterans Health Administration, 202–273–8549 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This document proposes to set forth requirements regarding the use of temporary lodging by veterans receiving VA medical care or C&P examinations and by family members or other persons accompanying veterans to provide the equivalent of familial support. VA is mandated to establish a program for providing such temporary lodging under section 221(a) of the Veterans Benefits and Health Care Improvement Act of 2000 (Pub. L. 106–419). These statutory provisions regarding temporary lodging have been codified at 38 U.S.C. 1708 and are administered by the Veterans Health Administration (VHA) of VA.

The proposed rule provides for temporary lodging at Fisher Houses, VA health care facilities (generally referred to as ''hoptels''), and at temporary non-VA lodging facilities, such as hotels or motels, provided by a VA health care facility. These are the facilities that may be used for temporary lodging under 38 U.S.C. 1708.

Under 38 U.S.C. 1708(c), a Fisher House is a housing facility that is located at or near a VA health care facility, that is available for residential use on a temporary basis by eligible persons, and that was constructed by and donated to VA by the Zachary and Elizabeth M. Fisher Armed Services Foundation.

Consistent with the limits of statutory authority in 38 U.S.C. 1708(b) and subject to the conditions discussed in this document, the proposed rule provides that the following are eligible to stay in temporary lodging:

(a) A veteran with an appointment at a VA health care facility for the purpose of receiving health care or a C&P examination; and

(b) A member of the family of such veteran or another person who accompanies such veteran to provide the equivalent of familial support.

The proposed rule provides that to obtain temporary lodging, a veteran must make an application to the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction. This may be done by letter, electronic means (including telephone, e-mail, or facsimile), or in person at the VA health care facility of jurisdiction. Under the proposed rule, the veteran must provide the following information:

(a) Veteran's name;

(b) Beginning date and time and duration of scheduled care;

(c) Type of scheduled care;

(d) Name, gender, and relationship to the veteran of person accompanying veteran;

(e) Requested dates for temporary lodging,

(f) Distance, time, and means of travel from the veteran's home to VA health care facility;

(g) Circumstances that may affect the time of travel from the veteran's home to VA health care facility; and

(h) A statement that the veteran is medically stable and capable of self-care or will be accompanied by a caregiver able to provide the necessary care. This will allow for ease of application and provide VA with information necessary to determine whether the veteran is eligible for temporary lodging.

The proposed rule provides that, as a condition for receiving temporary lodging, a veteran must be required to travel either 50 or more miles or at least two hours from their home to the VA health care facility, except that the facility director at the VA health care facility of jurisdiction may make an exception to distance or time provisions based on exceptional circumstances, such as condition of the veteran, inclement weather, road conditions, or the mode of transportation used by the veteran. We believe this a reasonable interpretation of the requirement at 38 U.S.C. 1708(b)(1) which provides that a veteran must travel a ''significant distance'' for the veteran and other person to be eligible for temporary housing.

The proposed rule provides that, as a condition for receiving temporary lodging, the veteran must be medically stable and must be capable of self-care or be accompanied by a caregiver able to provide the necessary care. This is necessary because VA does not provide nursing or other medical care for temporary lodging beds.

The proposed rule establishes criteria for determining when temporary lodging will be made available. Consistent with VHA's health care mission, the proposed rule provides that temporary lodging may be furnished in connection with care or C&P examinations provided at a VA health care facility. The proposed rule provides that if the veteran is undergoing extensive treatment or procedures, such as an organ transplant or chemotherapy, eligible persons may be furnished temporary lodging for the duration of the episode of care. The proposed rule also provides that temporary lodging may be available the night before the day of the scheduled care, if the veteran leaving home by 8:00 AM, would be unable to arrive at the health care facility by the time of the scheduled care. Further, the proposed rule provides that temporary lodging may be available the night of the scheduled care if, after the completion of the care, the veteran would be unable to return home by 7 PM. These provisions are designed to allow temporary lodging during the times it would be reasonably needed.

Fisher Houses are available solely for temporary lodging. The proposed rule provides that non-utilized beds and rooms at a VA health care facility will be made available if not barred by law and if the Director of the VA health care facility determines that such action would not have a negative impact on patient care. The proposed rule also provides that temporary lodging facilities, such as hotels or motels, will be utilized based on availability of local funding as determined by the Director of the health care facility. In addition, we propose that temporary lodging will be provided on a first-come first-serve basis. We believe that these provisions would constitute an appropriate use of VA facilities and establish a reasonable method for determining priority.

Except for certain medically-related decisions that are left to health care personnel, the proposed rule provides that decisions concerning temporary lodging are to be made by the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction. We believe these are appropriate delegations of authority.

VA has authority under 38 U.S.C. 1708 to establish charges for temporary lodging. We believe that if we were to charge, we would need to establish exemptions for those who lack the means to pay for lodging accommodations. Further, based on our experience, we believe that the vast majority of veterans who seek temporary lodging fall into this category. Moreover, we believe that administrative costs for determining need and the additional billing costs would exceed amounts we could reasonably expect to collect based on any reasonable charge amount. Accordingly, the proposed rule provides that costs for temporary lodging shall be borne by VA.

Paperwork Reduction Act

The proposed rule at § 60.4 contains collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection of information it approves. VA 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.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AL13.''

Title: Application for temporary lodging.

Summary of collection of information: The proposed rule at § 60.4 provides that to obtain temporary lodging, a veteran must make an application to the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction. This may be done by letter, electronic means (including telephone, e-mail, or facsimile), or in person at the VA health care facility of jurisdiction. Under the proposed rule, the veteran must provide the following information:

(a) Veteran's name;

(b) Beginning date and time and duration of scheduled care;

(c) Type of scheduled care;

(d) Name, gender, and relationship to the veteran of person accompanying veteran;

(e) Requested dates for temporary lodging;

(f) Distance, time, and means of travel from the veteran's home to VA health care facility;

(g) Circumstances that may affect the time of travel from the veteran's home to VA health care facility; and

(h) A statement that the veteran is medically stable and capable of self-care or will be accompanied by a caregiver able to provide the necessary care.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for temporary lodging.

Description of likely respondents: Veterans seeking temporary lodging from VA for themselves or others.

Estimated number of respondents per year: 250,000.

Estimated frequency of responses per year: 2.

Estimated total annual reporting and recordkeeping burden: 83,333 hours.

Estimated annual burden per collection: 10 minutes.

The Department considers comments by the public on proposed collections of information in—

• Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

• Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

• Enhancing the quality, usefulness, and clarity of the information to be collected; and

• Minimizing the burden of the collections of information on those who are to respond, including responses 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.

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

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The adoption of the proposed rule would not have an effect on small entities other than possibly the lodging industry. However, any effect would be minuscule. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: February 21, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR chapter I is proposed to be amended by adding a new part 60 to read as follows:

PART 60—FISHER HOUSES AND OTHER TEMPORARY LODGING

Sec.

60.1 Purpose.
60.2 Definitions.
60.3 Eligible persons.
60.4 Application.
60.5 Travel.
60.6 Condition of veteran.
60.7 Duration of temporary lodging.
60.8 Lodging availability.
60.9 Initial decisionmaker.
60.10 Costs.

Authority: 38 U.S.C. 501, 1708.

§ 60.1 Purpose.

This part sets forth requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving VA medical care or C&P examinations and a family member or other person accompanying the veteran to provide the equivalent of familial support.

(Authority: 38 U.S.C. 501, 1708)

§ 60.2 Definitions.

For the purposes of this part:

C&P examination means an examination requested by VA's Compensation and Pension Service to be conducted at a VA health care facility for the purpose of evaluating claims by veterans.

Temporary lodging means:

(1) Lodging at a Fisher House which is a housing facility that is located at or near a VA health care facility, that is available for residential use on a temporary basis by eligible persons, and that was constructed by and donated to VA by the Zachary and Elizabeth M. Fisher Armed Services Foundation, or

(2) Lodging at a temporary lodging facility located at a VA health care facility (generally referred to as a ''hoptel''), or a temporary non-VA lodging facility, such as a hotel or motel, provided by a VA health care facility.

VA means the Department of Veterans Affairs.

(**Authority:** 38 U.S.C. 501, 1708)

§ 60.3 Eligible persons.

The following are eligible to stay in temporary lodging subject to the conditions of this part:

(a) A veteran with an appointment at a VA health care facility for the purpose of receiving health care or a C&P examination, and

(b) A member of the family of such veteran or another person who accompanies such veteran to provide the equivalent of familial support.

(Authority: 38 U.S.C. 501, 1708)

§ 60.4 Application.

To obtain temporary lodging under this part, a veteran must make an application to the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction. This may be done by letter, electronic means (including telephone, e-mail, or facsimile), or in person at the VA health care facility of jurisdiction. The veteran shall provide the following information:

(a) Veteran's name;

(b) Beginning date and time and duration of scheduled care;

(c) Type of scheduled care;

(d) Name, gender, and relationship to the veteran of person accompanying veteran;

(e) Requested dates for temporary lodging;

(f) Distance, time, and means of travel from the veteran's home to VA health care facility;

(g) Circumstances that may affect the time of travel from the veteran's home to VA health care facility; and

(h) A statement that the veteran is medically stable and capable of self-care or will be accompanied by a caregiver able to provide the necessary care.

(Authority: 38 U.S.C. 501, 1708)

§ 60.5 Travel.

As a condition for receiving temporary lodging under this part, a veteran must be required to travel either 50 or more miles or at least two hours from his or her home to the VA health care facility, except that the facility director at the VA health care facility of jurisdiction may make an exception to distance or time provisions based on exceptional circumstances, such as

condition of the veteran, inclement weather, road conditions, or the mode of transportation used by the veteran.

(Authority: 38 U.S.C. 501, 1708)

§ 60.6 Condition of veteran.

As a condition for receiving temporary lodging under this part, the veteran must be medically stable and must be capable of self-care or be accompanied by a caregiver able to provide the necessary care. Questions regarding these issues will be resolved by an appropriate health care provider at the VA health care facility of jurisdiction.

(Authority: 38 U.S.C. 501, 1708)

§ 60.7 Duration of temporary lodging.

Temporary lodging may be furnished to eligible persons in connection with care or C&P examinations provided at a VA health care facility. When a veteran is undergoing extensive treatment or procedures, such as an organ transplant or chemotherapy, eligible persons may be furnished temporary lodging for the duration of the episode of care subject to limitations described in this section. Temporary lodging may be available the night before the day of the scheduled care, if the veteran leaving home by 8:00 AM, would be unable to arrive at the health care facility by the time of the scheduled care. Temporary lodging may be available the night of the scheduled care if, after the completion of the care, the veteran would be unable to return home by 7:00 PM.

(Authority: 38 U.S.C. 501, 1708)

§ 60.8 Lodging availability.

Fisher Houses are available solely for temporary lodging under this part. Non-utilized beds and rooms at a VA health care facility will be made available if not barred by law and if the Director of the VA health care facility determines that such action would not have a negative impact on patient care. Temporary lodging facilities, such as hotels or motels, will be utilized based on availability of local funding as determined by the Director of the health care facility of jurisdiction. Temporary lodging will be provided on a first-come first-serve basis.

(Authority: 38 U.S.C. 501, 1708)

§ 60.9 Decisionmaker.

Except as otherwise provided in this part, the person responsible for coordinating the temporary lodging program at the VA health care facility of jurisdiction is responsible for making decisions under this part.

(Authority: 38 U.S.C. 501, 1708)

§ 60.10 Costs.

Costs for temporary lodging under this part shall be borne by VA.

(Authority: 38 U.S.C. 501, 1708)

[FR Doc. 02–10597 Filed 4–29–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL–7203–6]

Designation of Areas for Air Quality Planning Purposes; Redesignation of Particulate Matter Unclassifiable Areas; Redesignation of Hydrographic Area 61 for Particulate Matter, Sulfur Dioxide, and Nitrogen Dioxide; State of Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this document, EPA is proposing to approve requests from the State of Nevada, pursuant to section 107(d) of the Clean Air Act (Act), to redesignate the current single unclassifiable area for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) into numerous individual areas to be consistent with the area definitions for other pollutants. EPA is also proposing to approve a state-requested subdivision of one of those individual areas, referred to as hydrographic area 61 (Boulder Flat), into two areas. EPA's approval of these requests would establish hydrographic areas as the section 107(d) unclassifiable areas for PM_{10} and would replace hydrographic area 61 with two new section 107(d) areas for PM_{10}, sulfur dioxide (SO_2), and nitrogen dioxide (NO_2): Upper area 61 and lower area 61. In this action, EPA is also proposing to delete certain total suspended particulate (TSP) area designations that are no longer necessary. EPA believes that the State's requests comply with the federal standards for approval of section 107(d) redesignations and that approving the State's request is appropriate.

DATES: Comments on this proposed rule must be received in writing by May 30, 2002.

ADDRESSES: Written comments on this action should be addressed to Gerardo Rios, Chief, Permits Office, Air Division (AIR–3), EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

You can inspect copies of the State's submittal, and other supporting documentation relevant to this action, during normal business hours at Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105.

You may also see copies of the State's submittal at the Nevada Division of Environmental Protection, 333 W. Nye Lane, Room 138, Carson City, Nevada 89706.

FOR FURTHER INFORMATION CONTACT: David Albright, EPA Region 9, Air Division, Permits Office (AIR–3), at (415) 972–3971 or albright.david@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Evaluation of State's Request To Redesignate PM_{10} Unclassifiable Area
II. Removing Unnecessary TSP Area Designations from Part 81
III. Proposed Redesignation of Hydrographic Area 61
IV. Proposed Action
V. Request for Public Comment
VI. Administrative Requirements

I. Evaluation of State's Request To Redesignate PM_{10} Unclassifiable Area

Section 107(d)(1) of the 1977 Amendments to the Act required each State to submit to the Administrator a list identifying those areas which (1) do not meet a national ambient air quality standard (NAAQS) (nonattainment areas), (2) cannot be classified on the basis of available ambient data (unclassifiable areas), and (3) have ambient air quality levels better than the NAAQS (attainment areas). In 1978, we published the original list of all area designations pursuant to section 107(d)(2) (commonly referred to as ''section 107 areas''), including those designations for TSP. See 43 FR 8962 (March 3, 1978). EPA's designations of nonattainment, attainment, and unclassifiable areas in the State of Nevada are codified at 40 CFR 81.329. The designations for Nevada have been the subject of a recent technical correction by EPA. See 67 FR 12474 (March 19, 2002). This recent EPA action clarified that the TSP (as well as the NO_2 and SO_2) designations in the State of Nevada are based on hydrographic areas [1] as delineated by

[1] The State of Nevada is divided into 14 distinct hydrologic units called hydrographic regions. The hydrographic regions (or waterbasins or watersheds) have been further disaggregated into 256 hydrographic areas and sub-areas. The hydrographic areas and sub-areas, which Nevada also uses to define their air quality management areas, typically comprise a valley, a portion of a valley, or a terminal basin. For simplicity, in this notice we use the term ''hydrographic areas'' to refer to both the hydrographic areas and the sub-areas.

the Nevada Division of Water Resources in 1971 with one exception: the split of the Carson Desert hydrographic area (101) into two areas: A smaller Carson Desert (101) and Packard Valley (101A). See 45 FR 46807 (July 11, 1980). The total number of TSP section 107 areas in the State of Nevada is 255.

EPA revised the primary and secondary NAAQS for particulate matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM_{10} indicator. However, we did not establish PM_{10} area designations at the time we established PM_{10} as the new indicator for the particulate matter NAAQS. Instead, Congress established a process for PM_{10} area designations in the Clean Air Act Amendments of 1990. In 1991, pursuant to the 1990 Amendments, the State of Nevada submitted their recommendations concerning nonattainment areas for PM_{10}. Dated March 15, 1991, the State's letter containing their recommendations did not refer to PM_{10} attainment or unclassifiable areas, instead focusing solely on the identification of nonattainment areas. Later in 1991, based on the State's recommendations, we revised the nonattainment areas under section 107(d) for PM_{10}, but we did not identify attainment or unclassifiable areas for PM_{10} at that time. See 56 FR 56694 (November 6, 1991). In 1992, we recognized that we had neglected to identify attainment or unclassifiable areas for PM_{10} in our 1991 rule and thus added the designation ''unclassifiable'' for the areas not otherwise designated nonattainment for PM_{10}, using the term ''rest of state.'' See 57 FR 56762 (November 30, 1992). In this context, the use of the term ''rest of state'' in the PM_{10} table in 40 CFR 81.329 was only identifying the portion of the State that EPA had not designated nonattainment for PM_{10}. However, as EPA clarified in our recent action cited above, the designation ''rest of state'' in the PM_{10} table refers to previously designated hydrographic areas for the purposes of the PSD program. See 67 FR 12474 (March 19, 2002).

Pursuant to the redesignation procedures of section 107(d)(3) of the Act, States may request EPA's approval of area redesignations (including boundary changes to existing areas), and on April 16, 2002, the State of Nevada submitted a request to EPA to redesignate the existing PM_{10} section 107 unclassifiable area by establishing hydrographic areas within the State as the PM_{10} unclassifiable areas.

The State of Nevada's request to establish the hydrographic areas as section 107 unclassifiable areas for PM_{10} is supported by the fact that the State has a long history, dating to the 1970s, of relying upon the hydrographic areas as air quality management areas. EPA approved the use of hydrographic areas as section 107 areas in 1978 (see 43 FR 8962, March 3, 1978). In fact, the hydrographic area-based approach has been used by the State since 1978 to manage particulate matter (and other criteria pollutant) emissions, and it remains the basis on which they implement their federally delegated PSD program for all pollutants. Thus, the effect of finalizing today's proposal to approve the State's request to establish the hydrographic areas as the section 107 unclassifiable areas for PM_{10} would be to synchronize the classification of designated PM_{10} section 107 areas with the current and longstanding approach the State has used to manage its air quality.

In summary, we are proposing to approve the State's request to establish the statewide hydrographic areas (previously established for TSP) as the PM_{10} unclassifiable areas under section 107(d) of the Act.[2] Our proposed action would replace the single unclassifiable area designated for Nevada for PM_{10} with 253 unclassifiable areas. These areas would be defined as the hydrographic areas delineated by the Nevada Division of Water Resources in 1971, as adjusted in 1980 to recognize an additional hydrographic area (101A) referred to as Packard Valley. Together with the two PM_{10} nonattainment areas in Nevada (Las Vegas and Reno planning areas), the total number of PM_{10} section 107 areas would become 255; these are the same 255 section 107 areas currently designated for TSP.

II. Removing Unnecessary TSP Area Designations from Part 81

The PSD provisions of part C (of title I) of the Act apply in all section 107 areas that are designated attainment or unclassifiable (40 CFR 52.21(i)(3)). Under the PSD program, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (i.e., increments). As discussed above, EPA revised the primary and secondary NAAQS for particulate matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM_{10} indicator. However, EPA did not revise 40 CFR part 81 at that time to delete the areas designated as attainment or unclassifiable for TSP because the Agency had not yet promulgated increments for PM_{10}. In 1990, Congress provided (in section 107(d)(4)(B) of the amended Act) that the designations for TSP existing immediately prior to the enactment date of the amendments (November 15, 1990) would remain in effect until EPA determined that the designations were no longer necessary for implementing the maximum allowable increases in concentrations of particulate matter pursuant to section 163(b) of the amended Act.

In 1993, EPA promulgated the PM_{10} increments and revised the PSD regulations accordingly. See 58 FR 31622 (June 3, 1993). In our 1993 PSD rule, we indicated that the replacement of the TSP increments with PM_{10} increments (which operate independently from the section 107 area designations for TSP) negates the need for the TSP attainment or unclassifiable area designations to be retained. We also indicated that we would delete such TSP designations in 40 CFR part 81 upon the occurrence of one of the following events: EPA's approval of a State's revised PSD program containing the PM_{10} increments; EPA's promulgation of the PM_{10} increments into a State's SIP where the State chooses not to adopt the increments on their own; or EPA's approval of a State's request for delegation of PSD responsibility under 40 CFR 52.21(u). See 58 FR 31622, 31635 (June 3, 1993). In some instances, where a State's request for delegation of PSD responsibility (and EPA's approval of that request) occurred prior to our 1993 PSD rule, the § 52.21 delegation automatically extended to subsequent revisions to the PSD regulations (such as implementation of the PM_{10} increment). Our 1993 PSD rule became effective on June 3, 1994.

For PSD implementation and enforcement purposes, the State of Nevada is divided into three jurisdictions: the Nevada Department of Conservation and Natural Resources (DCNR), Washoe County District Health Department (WCDHD), and the Clark County Department of Air Quality Management (CCDAQM). EPA has delegated authority under 40 CFR 52.21(u) to implement and enforce the

[2] It is important to note that hydrographic areas are already established as the PSD baseline areas for PM_{10} (and other pollutants), so finalization of today's proposal will not effect any change in how the State manages their federally delegated PSD program. For example, pursuant to 40 CFR 52.21(b)(14)(iv), minor source baseline dates originally established for the TSP increments would not be rescinded by finalization of this proposed action and would remain in effect and continue to apply for purposes of determining the amount of available PM_{10} increment. For further explanation see 67 FR 12474 (March 19, 2002), which includes a detailed explanation of EPA's prior approval of the use of hydrographic areas for PSD baseline purposes.

federal PSD program to DCNR for those PSD major sources or major modifications locating in or constructing in its jurisdiction, which includes the entire State with the exception of Washoe and Clark counties. This delegation agreement covers any revisions that EPA makes to the PSD regulations. See 48 FR 28269 (June 21, 1983), as amended at 54 FR 22888 (May 30, 1989). With certain exceptions not relevant here, EPA did the same for the WCDHD, pursuant to an agreement effective May 9, 1985.

As noted above, for delegated PSD programs, such as those administered by DCNR and WCDHD, the listing of designated TSP attainment or unclassifiable areas became unnecessary on the effective date of our 1993 PSD rule (i.e., June 3, 1994) because, from that date onward, the PM_{10} increments and baseline areas replaced the TSP increments and baseline areas for the purposes of the federal PSD program. Therefore, if EPA finalizes today's proposal, we will eliminate the listing of designated TSP attainment or unclassifiable areas in Nevada, except for the designations in Clark County. In contrast to NDEP and WCDHD, CCDAQM administers an EPA-approved PSD program (rather than administering a delegated federal PSD program) for PSD sources in Clark County (see 47 FR 26620 (June 21, 1982)). We will delete the appropriate TSP designations for Clark County when we approve revisions to their PSD program that include the PM_{10} increments.

In summary, we are proposing to update the TSP table in 40 CFR part 81 for Nevada to delete those designations that are no longer necessary. Specifically, we are proposing to delete the TSP attainment and unclassifiable area designations statewide, except for those in Clark County.

III. Proposed Redesignation of Hydrographic Area 61

A. Nevada's Submittal

In a letter dated November 6, 2001, the State of Nevada requested EPA's approval of a redesignation of the boundary of hydrographic area 61 to create two new PSD baseline areas for PM_{10}, NO_2, and SO_2. The State's redesignation request was made pursuant to section 107(d)(3)(D) of the Act, which states: ''the Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State.''

The State's redesignation submittal included substantial documentation supporting their request. They provided detailed maps showing the proposed subdivision of hydrographic area 61 into upper area 61 (156 square miles) and lower area 61 (390 square miles). The maps include such features as the area's topography, major roads, railroads, major and minor sources in the area and in nearby areas, and the location of Jarbidge Wilderness Area (the only Class I area in the State). The State also provided a detailed legal description of the proposed new baselines areas, data regarding emissions from all stationary sources in the hydrographic area and major sources in nearby areas, population characteristics and census data for the area, descriptions of the principal land uses, and results of ambient air quality modeling and monitoring, in hydrographic area 61 specifically, and in the larger regional area. Finally, the submittal included the State's perspective on how EPA's approval of the redesignation request would promote Nevada's air quality management.

B. EPA's Criteria for Evaluating State Requests for PSD Baseline Area Redesignations

Section 107(d)(3)(D) of the Act provides that, ''within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation.'' Section 107(d)(3) does not provide specific direction to EPA for evaluating redesignation requests that involve subdivision of existing attainment or unclassifiable areas, in contrast to requests that involve a change in the designation of a given area, e.g., from nonattainment to attainment (see section 107(d)(3)(E)) or from nonattainment to unclassifiable (see section 107(d)(3)(F)). However, section 107(d)(3)(A) of the Act, which describes EPA initiation of an area redesignation, indicates that redesignations may be initiated ''on the basis of air quality data, planning and control considerations, or any other air-quality related considerations the Administrator deems appropriate.'' EPA believes it is reasonable to conclude that these considerations, provided in the Act as an appropriate basis for EPA-initiated redesignations, also provide some basis for EPA's evaluation of state-initiated redesignation requests.

In addition to the general statutory language of section 107, EPA's rules also guide evaluation of a proposed subdivision of existing PSD baseline areas, imposing some minimal limits on the establishment of new baseline areas. These limits include a prohibition on the creation of new baseline areas if: (1) A PSD source has located in, or significantly impacted on the clean area being considered for redesignation; or (2) the newly created areas either intersect the area of impact of any major PSD source or have a boundary that is smaller than such impact area. EPA's rules currently define ''area of impact'' as the 1 μg/m3 annual average ambient level isopleth around the major PSD source. See 40 CFR 52.21(b)(15) and 45 FR 52716 (August 7, 1980).

Historically, EPA has relied almost exclusively on the regulatory criteria in part 52 as the basis for evaluating state-initiated requests for PSD baseline area redesignations. See, for example, 60 FR 47297 (September 12, 1995) and 58 FR 50275 (September 27, 1993) (EPA's approvals of redesignation requests made by the States of Wyoming and Minnesota, respectively). However, Federal Land Managers and EPA have recently become concerned about the existing regulatory criteria for redesignation of PSD baseline areas. As a result of these concerns, EPA is currently evaluating the existing regulatory and policy framework for PSD baseline area redesignations to ensure that it continues to adequately prevent significant deterioration of air quality in attainment and unclassifiable areas. Until EPA has completed its evaluation, the Agency will continue to evaluate requests based on the currently applicable federal requirements and policies. Thus, EPA is evaluating Nevada's request based on the statutorily derived ''appropriate air quality-related considerations'' and the regulatory criteria for PSD baseline redesignations in 40 CFR part 52.

C. Evaluation of Nevada's Request to Redesignate Area 61

EPA has evaluated the State's request to divide hydrographic area 61 and determined that the request adequately complies with the currently applicable federal requirements and policies for PSD baseline area redesignations.

As described above, EPA's part 52 regulations prohibit the creation of new baseline areas if a PSD source has located in, or significantly impacted on the clean area being considered for redesignation, or if the newly created areas either intersect the area of impact of any major PSD source or have a boundary that is smaller than such impact area. Nevada's redesignation submittal indicates that hydrographic area 61 does not presently contain any major PSD sources [3] and that no major

[3] There is one major source located in Hydrographic area 61 (Barrick Goldstrike Mines, Inc.); however, the source has not been subject to PSD review.

PSD sources are significantly impacting hydrographic area 61. Thus, no PSD source has located in, or is significantly impacting the clean area being considered for redesignation (hydrographic area 61), and the newly created baseline areas (upper and lower area 61) do not intersect the area of impact of any major PSD source nor do they have boundaries that are smaller than such impact area. EPA therefore concludes that the proposed new baseline areas comply with our regulatory criteria for the redesignation of PSD baseline areas.

In addition, EPA believes that consideration of whether the proposed PSD baseline area redesignation will interfere with the State's ability to effectively manage air quality constitutes an appropriate ''air quality-related consideration'' in evaluating the State's request. In this case, the State believes that the redesignation will promote their air quality management objectives by conforming their management of hydrographic area 61 to the distinct geographic, meteorologic, and land use characteristics of the upper and lower areas.

Since EPA's policy has long been to provide States a fair degree of autonomy to balance air quality management with economic planning, our concern in evaluating this request is not necessarily to ensure that the redesignation will improve air quality management, but to ensure that it both complies with regulatory standards and does not interfere with the State's management of air quality.[4]

Our evaluation of Nevada's request indicates that approving the subdivision of hydrographic area 61 is not likely to interfere with the State's management of air quality in the affected area. Since the minor source baseline date has not been triggered in hydrographic area 61, approving the subdivision would not untrigger the baseline area and, in general, EPA believes that it would not likely result in the types of adverse effects described in footnote 4. For example, since there would not be an untriggering of the baseline area, there is no elimination of already consumed increment and no consumed increment would be added to the baseline for the area. That is, the amount of pollution allowed in hydrographic area 61 would not change as a result of EPA's approval of Nevada's request. In addition, the area proposed for redesignation is not located in close proximity to Jarbidge Wilderness Area (the only Class I area in Nevada), and approval of the redesignation request is not expected to have any impact on air quality related values (AQRVs) at Jarbidge or any other Class I area.

[4] Some examples of the types of redesignations that might interfere with effective air quality management are those that would have the effect of untriggering a minor source baseline date in an area affecting a Class I area or in an area where a substantial portion of the available increment has been consumed, redesignations that serve to carve out small ''postage stamp'' areas encompassing only the significant impact area around a major PSD source, or large-scale redesignations creating numerous small baseline areas with little or no basis in effective management of air quality.

IV. Proposed Action

After considering all of the factors described in the above sections, EPA is proposing to approve the State of Nevada's request to redesignate the current single section 107 unclassifiable area for PM_{10} into 253 individual areas to correspond with those areas originally designated for TSP and is also proposing to remove the section 107 TSP designations that are no longer necessary. Finally, EPA is proposing to approve the State's request to redesignate hydrographic area 61 by dividing the basin into two section 107 areas: upper area 61 and lower area 61.

V. Request for Public Comment

We are soliciting public comment on all aspects of this proposal. These comments will be considered before taking final action. To comment on today's proposal, you should submit comments by mail (in triplicate if possible) as described in the **ADDRESSES** section listed in the front of this document. EPA will consider any written comments received by May 30, 2002.

VI. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this proposed action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action would redesignate areas for air quality planning purposes and would not impose additional requirements. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this proposed rule does not impose any enforceable duty, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule also does not have Federalism implications because it does 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 proposed rule does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: April 19, 2002.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 02–10628 Filed 4–29–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 512

[Docket No. NHTSA–02–12150]

RIN 2127–AI20

Confidential Business Information

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the regulation on Confidential Business Information. This proposal is designed primarily to simplify and improve the clarity of the regulation and to update specific sections to reflect current case law and legislative action. The proposal is intended to ensure the efficient processing of requests for confidential treatment and the proper protection for sensitive business information received by NHTSA.

DATES: Comments must be received on or before July 1, 2002.

ADDRESSES: Comments should refer to the docket number above and be submitted to: Docket Management Facility, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document.

You may call the Docket at 202–366–9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Heidi L. Coleman, Assistant Chief Counsel for General Law, Office of the Chief Counsel, NCC–30, National Highway Traffic Safety Administration, 400 7th Street SW., Room 5219, Washington, DC 20590, phone: (202) 366–1834.

SUPPLEMENTARY INFORMATION: NHTSA first published 49 CFR part 512, Confidential Business Information (Part 512), as a final rule on January 8, 1981 (46 FR 2049). In response to a petition for reconsideration, the agency made a minor change to the published rule, and republished it on June 7, 1982 (47 FR 24587). On November 28, 1989, NHTSA revised Part 512 (54 FR 48892) to incorporate statutory and case law changes, to provide procedural clarifications and to amend Appendix B—Class Determinations. The regulation has not been amended since that time.

NHTSA believes that the procedures for submitting confidential business information generally have worked well since the 1989 revision. However, new developments in the law as well as practical experience have made certain modifications necessary. These proposed modifications are described below.

Other changes are being proposed to make the regulation clearer and easier to follow, particularly for organizations or individuals who do not submit materials to the agency on a regular or frequent basis. In particular, we are proposing to reorganize the provisions of Part 512 and to use a question and answer format, designed to guide the reader through the procedural steps of Part 512. Under the proposal, Part 512 would be reorganized into five (5) general subparts, entitled: General Provisions; Submission Requirements; Additional Requirements; Agency Determination; and Agency Treatment of Information Claimed to be Confidential. Each subpart then would contain separate subheadings, most of which are presented in a question and answer format that is designed to guide the reader through all applicable requirements in that subpart.

While the proposal constitutes a significant change in the presentation and style of Part 512, it will not alter most of the substantive requirements contained in the regulation. The substantive changes that are being proposed are noted and explained below.

Subpart A—General Provisions

Subpart A would contain the general provisions that define the purpose, scope, and applicability of the regulation, which we use to consider claims that information is entitled to confidential treatment. This subpart also would include the definitions of terms used in the regulation. We propose to revise the definition for confidential business information to reflect the changes made in the case law. There are no substantive changes proposed in this portion of Part 512.

Subpart B—Submission Requirements

Subpart B would delineate the specific requirements that submitters must follow when they request confidential treatment for materials submitted to NHTSA. The requirements would specify the manner in which materials must be prepared, identified and submitted, and provide that information claimed to be confidential must be submitted with supporting information and a signed certificate.

Consistent with the agency's current regulation, the proposal would continue to provide that any information submitted to NHTSA, for which confidential treatment is claimed, must be marked as ''confidential.'' Each page that contains confidential information must be marked; if an entire page is claimed to be confidential, the markings must indicate this clearly; and, if portions of a page are claimed to be confidential, such portions must be marked by enclosing them within brackets ''[].'' We are proposing to emphasize these requirements for the benefit of submitters of information. If materials are not marked properly, there is a risk that information could be disclosed inadvertently to the public or to a competitor. We believe these requirements help ensure protection for information claimed to be confidential.

The proposal would also continue to require that any request for confidential treatment must be accompanied by supporting information and a signed certificate. However, the proposal further clarifies the elements that must be included in a request, and it specifies that certain additional items of information or statements must be included in the supporting documentation and the certificate. For example, the supporting documentation must include a general description of the information for which confidentiality is claimed and an indication of the confidentiality standard under which the claim is being made. The certificate must include a statement asserting the length of time for which confidential treatment is being claimed.

Through these proposed changes, we seek to ensure that submitters are fully informed about the items of information the agency needs to make a decision regarding the request, and provide submitters with an adequate opportunity to submit all of this information. If the agency does not receive sufficient information upon which to base its decision, there is a risk that a request might be denied improvidently. The burden remains on submitters to provide information that adequately supports requests for confidential treatment.

We are proposing to add a requirement that each page claimed to contain confidential information be numbered. This proposed change would allow these pages to be easily identified and distinguished. Such markings should help to ensure that there is no question about which pages are claimed

to be confidential and which pages are determined to be entitled to confidential treatment.

The agency's current regulation requires submitters to send to the Office of Chief Counsel two complete copies of documents that contain information claimed to be confidential and one copy of a public version of the document, from which portions claimed to be confidential have been redacted. In addition, the regulation requires submitters to send a public version of the document to ''the appropriate NHTSA official'' if the document claimed to be confidential relates to ''an investigation or proceeding, a rulemaking action, or pursuant to a reporting requirement for which there is a public file or docket.''

These requirements have proved to be cumbersome and difficult for submitters to follow. In addition, these requirements may sometimes prevent offices with an immediate need for the submitted information from receiving it quickly, which can delay the work of the agency.

Accordingly, we are proposing to change these requirements to minimize the burden to submitters and provide other agency offices immediately with the information they need to perform their assigned tasks, while still providing the Office of Chief Counsel with the information it needs to consider submitters' requests for confidential treatment. Specifically, the proposal would require submitters to submit a single copy of the information claimed to be confidential (with the certificate and supporting information mentioned above) to the Office of Chief Counsel and a complete version of the materials, as well as a redacted version, to the responsible office within the agency. Note that any non-confidential information that may be needed for the agency to make its determination regarding the submitter's request for confidential treatment should also be submitted to the Office of Chief Counsel along with the claimed confidential materials to ensure that an accurate assessment can be made. A second redacted copy would need to be submitted only in cases when the information is being provided in connection with a proceeding for which there is an established public docket. Consistent with the agency's current regulation, if blueprints or engineering drawings are being submitted, only one original copy must be provided. If claimed to be confidential, this copy would be submitted to the Office of Chief Counsel.

Finally, the agency proposes to request that any personal information contained in submissions, such as names, addresses and telephone numbers of consumers, be removed by the submitter from the redacted version of the submitted materials. This provision would help NHTSA protect the personal privacy of individuals, since the disclosure of this type of information could constitute a clearly unwarranted invasion of personal privacy.

Subpart C—Additional Requirements

Subpart C would contain additional requirements that submitters must follow when certain circumstances apply. All of these requirements are contained in the agency's current regulation, and NHTSA is not proposing to make any substantive changes to these requirements. The agency is proposing simply to assemble these requirements in a single subpart and to clarify these requirements.

Specifically, the requirements contained in this subpart would specify that submitters have a continuing obligation to amend any information they submit in support of a claim for confidential treatment whenever they become aware that the information submitted was inaccurate when it was originally submitted, or is no longer accurate. The requirements would also cover such procedural matters as the manner in which confidential treatment is to be claimed when the information is being submitted by a third party or when confidential treatment is being claimed for multiple items of information, and the steps submitters are to take if they need an extension of time to submit information in support of a claim for confidential treatment.

These requirements also would specify the consequences for noncompliance with part 512. For example, if submitters fail to amend incorrect information in support of a claim for confidential treatment, they may be subject to civil penalties; if submitters fail to properly mark materials for which they are claiming confidential treatment, their claim may be waived; and if submitters do not provide a certificate or adequate supporting information in support of their claim for confidential treatment, their claim may be denied.

Subpart D—Agency Determination

Subpart D would contain provisions that relate to decisions rendered by the agency regarding claims for confidential treatment. These provisions delineate the confidentiality standards and procedures used by the agency to render a confidentiality determination. These provisions also include determinations involving classes of information and the right of submitters to request reconsideration if they disagree with an agency decision. We are proposing substantive changes to these provisions. We are also proposing to clarify these requirements and assemble them in a single subpart.

The agency's current regulation provides that information may be afforded confidential treatment if it is ''a trade secret, or commercial or financial information that is privileged or confidential,'' and further that information is considered to be ''confidential'' when ''disclosure of the information would be likely to result in substantial competitive harm to the submitter of the information; . . . (when) failure to afford the information confidential treatment would impair the ability of NHTSA to obtain similar information in the future; or (when) disclosure of the information would be likely to impair other protectable government interests.'' 49 CFR 512.5 (2001).

When part 512 was last published, these confidentiality standards reflected then-current case law. Since that time, however, court decisions have been rendered regarding the protection of information under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). In particular, in 1992, the D.C. Circuit Court rendered a decision in *Critical Mass Energy Project* v. *NRC,* 975 F.2d 871 (D.C. Cir. 1992), which established a new standard of review for confidential business information that was submitted to an agency voluntarily. Under this decision, voluntarily submitted information need not meet the tests established in *National Parks & Conservation Ass'n* v. *Morton,* 351 F. Supp. 404 (D.D.C. 1972), rev'd & remanded, 498 F.2d 765 (D.C. Cir. 1974) (most notably the ''competitive harm'' test). Rather, voluntarily submitted information will be protected if it is the kind of information that is customarily not released to the public by the submitter. We are proposing to modify Part 512 to incorporate this new confidentiality standard. The proposal would also include a provision to cover any new confidentiality standards that are established in future court decisions.

Consistent with the agency's current regulation, the proposal would continue to provide that the agency may issue class determinations, under which NHTSA decides that a class of information is presumed to cause competitive harm if released. Appendix B to the agency's current regulation already lists three such classes of information. These classes include blueprints and engineering drawings

(under certain circumstances), future specific model plans, and future vehicle or equipment production or sales figures (in some cases, for limited periods of time). The proposal would retain these three classes of information presumed to cause competitive harm if released and would not add any others.

In addition, the proposal would provide that the agency may determine that a class of information is presumed not to cause competitive harm if released. Pursuant to this proposed change to the regulation, the agency proposes to create a number of classes of information presumed not to cause competitive harm if disclosed. These classes would be added, as a separate category, to Appendix B. To determine which classes of information might be included in this portion of the appendix, the agency considered the types of information typically submitted to the agency, particularly in connection with rulemaking actions, defect or compliance investigations, and regulatory reporting requirements. The agency also considered the types of information it is likely to receive in the future, such as pursuant to the new ''early warning'' requirements, about which an NPRM was published on December 21, 2001 (66 FR 66190). In addition, the agency considered relevant case law and the body of confidentiality requests it has received and decisions it has issued in recent years, regarding these types of information.

Based on this review, the agency proposes to determine that certain classes of information are presumed not to cause competitive harm if released. These classes would include consumer complaints and related documents required to be submitted to the agency, and reports and data required to the submitted to the agency relating to property damage and warranty claims. Although the agency routinely protects the name and other identifying information about individuals who may be identified in these documents, the agency has consistently not granted confidential treatment for this type of information.

The agency frequently receives requests for confidential treatment for these types of materials, and consistently denies such requests. The agency is proposing to establish these class determinations to document its current practice, which is based on applicable case law. It is the agency's hope that these class determinations would serve to inform submitters of information about the types of materials likely to be granted or not granted confidential treatment, and that this might expedite the processing of requests for confidential treatment that are submitted to the agency. The agency is interested in receiving public comment on these proposed class determinations. In particular, we are interested in comments regarding whether any of the class determinations proposed should be removed or modified.

The agency also proposes to establish a class determination applicable to test procedures used to certify compliance with applicable federal motor vehicle safety standards (FMVSS) and the results of such testing. Although it is customary for the agency to protect developmental or experimental testing data, the agency has had a long-standing practice of denying confidential treatment for information relating to tests based on the FMVSS or other standards that are known to the public, such as SAE standards, when used to certify compliance with FMVSS.

Release of compliance test data typically does not reveal testing procedures developed by manufacturers, but rather reveals only the results of testing based on procedures that are publicly known and contained in the FMVSS. In reviewing requests for confidential treatment of this type of information, the agency has often pointed out that while compliance test data may reveal specific test results for individual vehicles or motor vehicle equipment, such data do not typically reveal information that would cause competitive harm. For example, release of test results does not allow another manufacturer to anticipate competitive moves in the marketplace, plan investments to meet the competition or plan responses to anticipated actions of its competitors. The release of test results may reveal that a certain margin of compliance may be achieved, but it does not provide another manufacturer with information about how to obtain such a result.

The agency is proposing to establish a presumption that generally the release of these types of tests do not cause competitive harm. However, the agency recognizes that a manufacturer may develop a unique and confidential test or analysis to certify compliance with FMVSS applicable to its products. A manufacturer that in good faith believes that its testing or analysis does not mirror publicly known or available test procedures, and that disclosure of its unique processes may result in competitive harm, may seek to rebut the presumption and claim confidential treatment based on competitive harm. Any such claim must be accompanied by a thorough explanation of the basis for the submitter's assertions that the test procedure is not publicly known or available and that disclosure of the procedure and results would be competitively harmful.

Similarly, a submitter whose information falls within the categories of information for which a presumption of confidentiality attaches under our existing class determinations may not seek confidential treatment for that information unless the submitter also certifies that appropriate measures have been taken to maintain its confidentiality and that it has not been released to the public.

The agency requests public comment regarding this proposed class determination. We are also interested in receiving comments regarding whether any of the proposed class determinations should be applicable to the material to be submitted under the agency's ''early warning'' regulations and whether any additional class determinations should be established. For example, the agency's ''early warning'' NPRM proposes that manufacturers submit to the agency reports on incidents involving deaths or injuries and copies of field reports. The agency seeks comments regarding whether the agency should presumptively determine that these (or a subset of these) types of documents would or would not cause competitive harm to the submitter if released. Any suggested changes or additions to the proposed list of class determinations should be justified. We recognize that a final rule has not yet been issued regarding the ''early warning'' requirements, but we ask commenters to provide as much information as possible within this comment period. If necessary, we will allow for additional comments prior to finalizing any class determinations covering the ''early warning'' submissions.

This subpart of the proposed regulation would also cover such procedural matters as who makes confidentiality decisions within the agency, how long it should take the agency to make decisions on confidentiality requests, and how submitters who request confidential treatment for their information are notified of the agency's decision.

Finally, this subpart would contain provisions that continue to afford submitters the right to petition for reconsideration if the submitter does not agree with the agency's decision. These provisions would also describe the steps to take if submitters wish to exercise this right.

Subpart E—Agency Treatment of Information Claimed to be Confidential

Subpart E would describe the manner in which information claimed to be confidential is treated by the agency. Consistent with the agency's current regulation, the proposal would provide that any information identified and claimed to be confidential will be protected by the agency pending an agency decision, and it will continue to be treated confidentially if the submitter's request for confidential treatment is granted, except under certain limited circumstances.

Also consistent with the current regulation, the proposal would provide that a grant of confidentiality may be modified under certain circumstances, including newly discovered or changed facts, a change in applicable law, a change in a class determination or a finding that the prior determination was erroneous.

The proposal would also provide that information that has been claimed or determined to be entitled to confidential treatment may nonetheless be publicly released in some situations.

These situations include releases to Congress, releases pursuant to a court order, releases to the Secretary of Transportation or to other Executive agencies in accordance with applicable law, releases with the consent of the submitter, and releases to contractors (subject to certain conditions).

The agency's current regulation lists also three additional situations under which information claimed or determined to be entitled to confidential treatment may nonetheless be disclosed to the public. They include the disclosure under 49 U.S.C. 32505(c), 32708(a), 32910(c) or 33116(a) of information obtained pursuant to the Motor Vehicle Information and Cost Savings Act, when the information is relevant to a proceeding under the Act; the disclosure under 49 U.S.C. 30167(a) of information obtained pursuant to the National Traffic and Motor Vehicle Safety Act, relating to the establishment, amendment or modification of a Federal motor vehicle safety standard (FMVSS), when relevant to a proceeding under the Act; and the disclosure under 49 U.S.C. 30167(b) of information obtained pursuant to the National Traffic and Motor Vehicle Safety Act, relating to an alleged defect or noncompliance with applicable standards, if the Administrator determines that disclosure is necessary to carry out the purposes of the Act.

The Motor Vehicle Information and Cost Savings Act (Cost Savings Act) and the National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act) have been repealed and their pertinent provisions have been codified under title 49 of the United States Code. The proposal would modify Part 512, consistent with these statutory changes. In addition, the proposal would reference a new disclosure provision added by section 3(b) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, Pub. L. 106–414, November 1, 2000. Under that provision (49 U.S.C. 30166(m)(4)(C)) early warning information collected pursuant to regulations issued under 49 U.S.C. 30166(m), if claimed or determined to be entitled to confidential treatment, shall not be disclosed under 49 U.S.C. 30167(b) unless the Administrator determines that the disclosure will assist in carrying out Sections 30117(b) and Sections 30118 '' 30121.

Written Comments

Interested persons are invited to comment on this notice of proposed rulemaking. It is requested, but not required, that two copies be submitted. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. See 49 CFR 553.21. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to Docket Management Facility, Docket No. [NHTSA–02–XXXX], DOT, 400 Seventh Street, SW, Nassif Building, Room PL–401, Washington, DC 20590;

(2) By hand delivery to Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493–2251; or

(4) By electronic submission: log onto the DMS Web site at *http://dms.dot.gov* and click on ''Help and Information'' or ''Help/Info'' to obtain instructions.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agency will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

You may review submitted comments in person at the Docket Management Facility located at Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday.

You may also review submitted comments on the Internet by taking the following steps:

(1) Go to the DMS Web page at *http://dms.dot.gov/search/.*

(2) On that page, click on ''search''.

(3) On the next page (*http://dms.dot.gov/search/*) type in the four digit docket number shown at the beginning of this notice. Click on ''search''.

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Analyses and Notices

Executive Order 12988 (Civil Justice Reform)

This proposed rule would not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agency has determined that this proposed action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation Regulatory Policies and Procedures. Consequently, this rulemaking document was not reviewed by the Office of Management and Budget under Executive Order 12866, ''Regulatory Planning and Review.'' The rulemaking action also is not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Because the economic impacts of this rule are so

minimal, no further regulatory evaluation is necessary.

Executive Order 13132 (Federalism)

Executive Order 13132 requires the agency to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.'' ''Policies that have Federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with 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, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. The agency also may not issue a regulation with Federalism implications that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this proposal does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), and certify that this proposed action would not have a significant economic impact on a substantial number of small entities and find that the preparation of a Regulatory Flexibility Analysis is unnecessary.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) and has determined that it would not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

The requirements of Part 512 are considered to be information collection requirements as that term is defined by the Office of Budget and Management (OMB) in 5 CFR part 1320. Accordingly, the existing regulation of Part 512 has been submitted to and approved by OMB pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through December 31, 2001. Under this proposed revision these requirements remain collection requirements within the meaning published in 5 CFR Part 1320, and a request for continued approval has been submitted to OMB.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits and other effects of rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not require an assessment under this law. This rule would not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. Further, it would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private section.

Regulation Identifier Number (RIN)

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

List of Subjects in 49 CFR Part 512

Administrative procedure and practice, Confidential business information, Freedom of information, Motor vehicle safety, Reporting and record keeping requirements.

In consideration of the foregoing, the National Highway Traffic Safety Administration proposes to amend title 49, Code of Federal Regulations, by revising Part 512 as set forth below.

PART 512—CONFIDENTIAL BUSINESS INFORMATION

Subpart A—General Provisions

Sec.
512.1 Purpose and scope.
512.2 Applicability.
512.3 Definitions.

Subpart B—Submission Requirements

512.4 When requesting confidentiality, what should I submit?
512.5 How should I prepare documents when submitting a claim for confidentiality?
512.6 How many copies should I submit?
512.7 Where should I send the information for which I am requesting confidentiality?
512.8 What supporting information should I submit with my request?

Subpart C—Additional Requirements

512.9 What are the requirements if the information comes from a third party?
512.10 Duty to amend.
512.11 What if I need an extension of time?
512.12 What if I am submitting multiple items of information?
512.13 What are the consequences for noncompliance with this part?

Subpart D—Agency Determination

512.14 Who makes the confidentiality determination?
512.15 What confidentiality standards will the Office of Chief Counsel use to make confidentiality determinations?
512.16 Class determinations.
512.17 How long should it take to determine whether information is entitled to confidential treatment?
512.18 How will I be notified of the confidentiality determination?
512.19 If I disagree with a determination made by the Office of Chief Counsel under this part, what can I do?

Subpart E—Agency Treatment of Information Claimed To Be Confidential

512.20 How does the agency treat information submitted pursuant to this part claimed to be confidential before a confidentiality determination is made?
512.21 How is information submitted pursuant to this part treated once a confidentiality determination is made?
512.22 Under what circumstances may NHTSA modify a grant of confidentiality?
512.23 Under what circumstances may NHTSA publicly release confidential information?
Appendix A to part 512—Certificate in Support of Request for Confidentiality
Appendix B to part 512—Class Determinations

Appendix C to part 512—OMB Clearance

Authority: 49 U.S.C. 322; 5 U.S.C. 552; 49 U.S.C. 30166; 49 U.S.C. 30167; 49 U.S.C. 32307; 49 U.S.C. 32505; 49 U.S.C. 32708; 49 U.S.C. 32910; 49 U.S.C. 33116; delegation of authority at 49 CFR 1.50.

Subpart A—General Provisions

§ 512.1 Purpose and scope.

The purpose of this part is to establish the procedure by which NHTSA will consider claims that information submitted to the agency, or which the agency otherwise obtains, is confidential business information, as described in 5 U.S.C. 552(b)(4).

§ 512.2 Applicability.

(a) This part applies to all information which is submitted to NHTSA, or which NHTSA otherwise obtains, except as provided in paragraph (b) of this section.

(b) Information received as part of the procurement process is subject to the Federal Acquisition Regulation. 48 CFR, Chapter 1, as well as this part. In any case of conflict between the Federal Acquisition Regulation and this part, the provisions of the Federal Acquisition Regulation prevail.

§ 512.3 Definitions.

Whenever used in this part,

(a) *Administrator* means the Administrator of the National Highway Traffic Safety Administration.

(b) *Chief Counsel* means the Chief Counsel of the National Highway Traffic Safety Administration.

(c) *Confidential business information* means trade secrets or commercial or financial information that is privileged or confidential.

(1) A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.

(2) Commercial or financial information is considered confidential:

(i) If the information was required to be submitted and would likely impair the government's ability to obtain necessary information in the future or would likely cause substantial harm to the competitive position of the person from whom the information was obtained, or

(ii) If the information was voluntarily submitted and is the kind of information that would customarily not be released to the public by the person from whom it was obtained.

(d) *NHTSA* means the National Highway Traffic Safety Administration.

(e) ''*Substantial competitive harm*'' includes ''significant competitive damage'' under Chapter 329 of Title 49 of the United States Code, Automobile Fuel Economy, 49 U.S.C. 32910(c).

Subpart B—Submission Requirements

§ 512.4 When requesting confidentiality, what should I submit?

Any person submitting information to NHTSA and requesting that the information be withheld from public disclosure as confidential business information shall submit the following:

(a) The materials for which confidentiality is being requested, in conformance with §§ 512.5, 512.6, and 512.7 of this part;

(b) The Certificate, in the form set out in Appendix A to this part;

(c) Supporting information, in conformance with § 512.8; and

(d) Any request for an extension of time, made in accordance with § 512.11.

§ 512.5 How should I prepare documents when submitting a claim for confidentiality?

(a) Any person submitting information to NHTSA and requesting that the information be withheld from public disclosure as confidential business information shall identify the information being claimed as confidential as follows:

(1) The submitter shall stamp or mark the word ''confidential'' (or use some other legend that clearly indicates the presence of information claimed to be confidential) on the top of each page containing information claimed to be confidential. In addition, the submitter shall mark the first page of the submitted materials to clearly indicate that the document contains confidential information.

(2) *Entire page.* If an entire page is claimed to be confidential, the submitter shall indicate clearly that the entire page is claimed to be confidential.

(3) *Specific information within a page.* If the information for which confidentiality is being requested is contained within a page, the submitter shall enclose each item of information that is claimed to be confidential within brackets ''[ ].''

(b) Any person submitting information to NHTSA and requesting that the information be treated confidentially, shall number each page of the materials individually or use some other method that will clearly identify and distinguish each page of information (such as by using a stamp that provides a unique number for each page).

(c) It is requested that any information of a personal nature (names, addresses, phone numbers etc.) also be removed from the redacted version of the submitted materials.

§ 512.6 How many copies should I submit?

(a) Except as provided in paragraph (b) of this section, any person submitting information to NHTSA and requesting that the information be withheld from public disclosure as confidential business information shall submit to NHTSA copies as follows:

(1) One complete copy;

(2) One redacted copy from which information claimed to be confidential has been removed;

(3) If the information is being sent in connection with a proceeding for which there is an established public docket, then a second redacted copy shall be sent directly to the docket; and

(4) One copy containing only the information claimed to be confidential, and any non-confidential information necessary to enable the agency to assess the submitter's claim for confidential treatment.

(b) Any person submitting blueprints or engineering drawings need only provide the original version with their submission.

§ 512.7 Where should I send the information for which I am requesting confidentiality?

(a) The submitter shall send the complete copy and one redacted copy to the NHTSA office that requested the information or, if the information was not requested, to the intended NHTSA recipient of the information.

(b) The submitter shall send the copy containing only confidential information to the Office of Chief Counsel. This copy shall be accompanied by the certificate and the supporting information as required under §§ 512.4(b) and (c) of this part. Any non-confidential information that is necessary to enable the agency to assess the submitter's claim for confidential treatment should also be submitted to the Office of Chief Counsel.

(c) If the submitter does not know where to send the information, all copies shall be sent to the Office of Chief Counsel, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. These copies shall be accompanied by the certificate and the supporting information, as required under §§ 512.4(b) and (c) of this part.

§ 512.8 What supporting information should I submit with my request?

Whenever requesting confidentiality, the submitter shall:

(a) Describe the information for which confidentiality is being requested;

(b) Identify the confidentiality standard(s) under which the confidentiality request should be evaluated, in accordance with § 512.15;

(c) Justify the basis for the claim of confidentiality under the confidentiality standard(s) identified pursuant to paragraph (b) of this section by describing:

(1) Why the information qualifies as a trade secret, if the basis for confidentiality is that the information is a trade secret;

(2) What the harmful effects of disclosure would be and why the effects should be viewed as substantial, if the claim for confidentiality is based upon substantial competitive harm;

(3) What significant NHTSA interests will be impaired by disclosure of the information and why disclosure is likely to impair such interests, if the claim for confidentiality is based upon impairment to government interests; or

(4) What measures have been taken by the submitter to ensure that the information is not customarily disclosed or otherwise made available to the public, if the basis for confidentiality is that the information is voluntarily submitted;

(d) Indicate if any items of information fall within any of the class determinations included in Appendix B to this part; and

(e) State the name, address, and telephone number of the person to whom NHTSA's response and any inquiries should be directed.

Subpart C—Additional Requirements

§ 512.9 What are the requirements if the information comes from a third party?

Where confidentiality is claimed for information obtained by the submitter from a third party, such as a supplier, the submitter is responsible for obtaining from the third party the information that is necessary to comply with § 512.4 of this part, including a certificate in the form set out in Appendix A to this part.

§ 512.10 Duty to amend.

The submitter shall promptly amend any information provided under § 512.4 of this part whenever the submitter knows or becomes aware that the information was incorrect at the time it was provided to NHTSA, or that the information, although correct when provided to NHTSA, is no longer correct.

§ 512.11 What if I need an extension of time?

If a person is unable to submit the necessary information required under § 512.4 at the time the claimed confidential information is submitted to NHTSA, then that person may request an extension of time. Any request for an extension shall explain the reason for the extension of time and the length of time requested. The Office of Chief Counsel will determine whether an extension of time should be granted as well as the length of any extension.

§ 512.12 What if I am submitting multiple items of information?

Any certificate provided under § 512.4(b) of this part, and any supporting information provided under § 512.4(c) of this part, may be used to support a claim for confidential treatment of more than one item of information. However, general or nonspecific assertions or analysis may be insufficient to form an adequate basis for the agency to find that the information is entitled to confidential treatment, and may result in the denial of the claim.

§ 512.13 What are the consequences for noncompliance with this part?

(a) Noncompliance with § 512.10 may subject the submitter of information to civil penalties.

(b) If the submitter fails to comply with § 512.4 of this part at the time the information is submitted to NHTSA or does not request an extension of time under § 512.11, the claim for confidentiality may be waived, unless the agency is notified or otherwise becomes aware of the claim before the information is disclosed to the public. If the information is placed in a public docket or file, such placement is disclosure to the public within the meaning of this part and may preclude any claim for confidential treatment. The Office of Chief Counsel may notify a submitter of information or, if applicable, a third party from whom the information was obtained, of inadequacies regarding a claim for confidential treatment and may allow the submitter or third party additional time to supplement the submission, but has no obligation to provide either notice or additional time.

(c) If the submitter does not provide the certificate required under § 512.4(b) of this part or any supporting information required under § 512.4(c) of this part, or if the information is insufficient to establish that the information should be afforded confidential treatment under the confidentiality standards set out in § 512.15 of this part, a request that such information be treated confidentially may be denied. The Office of Chief Counsel may notify a submitter of information of inadequacies in the supporting information and may allow the submitter additional time to supplement the showing, but has no obligation to provide either notice or additional time.

Subpart D—Agency Determination

§ 512.14 Who makes the confidentiality determination?

The determination as to whether an item of information will be afforded confidential treatment under this part will be made by the Office of Chief Counsel.

§ 512.15 What confidentiality standards will the Office of Chief Counsel use to make confidentiality determinations?

Information may be afforded confidential treatment if the Office of Chief Counsel determines that:

(a) The information is a trade secret;

(b) Public disclosure of the information would be likely to cause substantial harm to the competitive position of the submitter;

(c) Public disclosure of the information would be likely to impair NHTSA's ability to obtain necessary information in the future;

(d) The information was provided to NHTSA voluntarily and the information would customarily not be released to the public by the person from whom it was obtained; or

(e) The information is otherwise entitled to protection, pursuant to 5 U.S.C. 552(b)(4) and the cases that have been decided thereunder.

§ 512.16 Class determinations.

(a) The Office of Chief Counsel may issue a class determination relating to confidentiality under this section if the Office of Chief Counsel determines that one or more characteristics common to each item of information in that class, will, in most cases, necessarily result in identical treatment of each item of information under this part, and that it is appropriate to treat all such items as a class for one or more purposes under this part. Once a class determination is made, the Office of Chief Counsel will publish the new class determination in the **Federal Register**.

(b) The Chief Counsel may amend, modify, or terminate any class determination established under this section. These changes will be published in the **Federal Register**.

(c) Class determinations that have been made by the Chief Counsel are listed in Appendix B to this part.

(d) A class determination may state that all of the information in the class:

(1) Is or is not governed by a particular section of this part or by a particular set of substantive criteria;

(2) Fails to satisfy the applicable substantive criteria and is therefore presumed not to cause competitive harm if released;

(3) Satisfies the applicable substantive criteria and is therefore presumed to cause competitive harm if released; or

(4) Satisfies the substantive criteria that competitive harm would result if released for a certain period of time, but thereafter would not.

(e) Class determinations will have the effect of establishing rebuttable presumptions and do not conclusively determine any of the factors set out in paragraph (d) of this section.

§ 512.17 How long should it take to determine whether information is entitled to confidential treatment?

(a) When information claimed to be confidential is requested under the Freedom of Information Act, the determination will be made within twenty (20) working days after NHTSA receives such a request or within thirty (30) working days in unusual circumstances as provided under 5 U.S.C. 552(a)(6)(A). However, these time periods may be extended by the Office of Chief Counsel for good cause shown on the Office of Chief Counsel's own motion or on request from any person. An extension will be made only in accordance with 5 U.S.C. 552(a)(6)(A), and will be accompanied by a written statement setting out the reasons for the extension.

(b) When information claimed to be confidential is not requested under the Freedom of Information Act, the determination of confidentiality will be made within a reasonable period of time, at the discretion of the Office of Chief Counsel.

§ 512.18 How will I be notified of the confidentiality determination?

(a) If a request for confidential treatment is granted, the submitter of the information will be notified in writing of the determination and of any appropriate limitations.

(b) If a request for confidential treatment is denied in whole or in part, the submitter of the information will be notified in writing of the determination, and the reasons for the denial, and will be informed that the information will be made available to the public not less than ten (10) working days after the submitter of the information has received notice of the denial. The information may be released publicly on an earlier date, if the Office of Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such date.

§ 512.19 If I disagree with a determination made by the Office of Chief Counsel under this part, what can I do?

(a) A submitter of information whose request for confidential treatment is denied in whole or in part, may petition for reconsideration of that decision. Petitions for reconsideration shall be addressed to and received by the Office of Chief Counsel prior to the date on which the information would otherwise be made available to the public. The determination by the Office of Chief Counsel upon such petition for reconsideration shall be administratively final.

(b) If a person is unable to submit a petition for reconsideration by the date on which the information otherwise would be made available to the public, that person may submit a request for an extension of time. Any request for an extension of time under this paragraph must be received by the Office of Chief Counsel before the date on which the information would be made available to the public, and the request must be accompanied by an explanation describing the reason for the request and the length of time requested. The Office of Chief Counsel will determine whether to grant or deny the extension and the length of the extension.

(c) If a petition for reconsideration is granted, the petitioner will be notified in writing of the determination and of any appropriate limitations.

(d) If a petition for reconsideration is denied in whole or in part, or if a request for an extension is denied, the petitioner will be notified in writing of the denial, and the reasons for the denial, and will be informed that the information will be made available to the public not less than ten (10) working days after the petitioner has received notice of the denial. The information may be released publicly on an earlier date, if the Office of Chief Counsel determines in writing that the public interest requires that the information be made available to the public on such date.

Subpart E—Agency Treatment of Information Claimed to be Confidential

§ 512.20 How does the agency treat information submitted pursuant to this part before a confidentiality determination is made?

(a) Information received by NHTSA, for which a properly filed confidentiality request is submitted, will be kept confidential until the Office of Chief Counsel makes a determination regarding its confidentiality. Such information will not be disclosed publicly, except in accordance with this part.

(b) Redacted copies of documents submitted to NHTSA under this part will be disclosed to the public.

§ 512.21 How is information submitted pursuant to this part treated once a confidentiality determination is made?

(a) Once the Office of Chief Counsel makes a determination regarding the confidentiality of the submitted information, all materials determined not to be entitled to confidential protection will be disclosed to the public in accordance with the determination, unless a timely petition for reconsideration is received by the agency.

(b) Upon receipt of a timely petition for reconsideration under § 512.19 of this part, the submitted information will remain confidential, pending a determination regarding the petition. Once the Office of Chief Counsel makes a determination regarding the petition for reconsideration, all materials determined not to be entitled to confidential protection will be disclosed to the public, in accordance with that determination.

§ 512.22 Under what circumstances may NHTSA modify a grant of confidentiality?

(a) NHTSA may modify a grant of confidentiality based upon:

(1) Newly discovered or changed facts;

(2) A change in the applicable law;

(3) A change in class determination, pursuant to § 512.16;

(4) The passage of time; or

(5) A finding that the prior determination is erroneous.

(b) If NHTSA believes that an earlier determination of confidentiality should be modified based on one or more of the factors listed in paragraph (a) of this section, the submitter of the information will be notified in writing that NHTSA has modified its earlier determination and of the reasons for the modification, and will be informed that the information will be made available to the public in not less that ten (10) working days from the date of receipt of the notice of modification. The submitter may seek reconsideration of the modification, pursuant to § 512.19.

§ 512.23 Under what circumstances may NHTSA publicly release confidential information?

(a) Information that has been claimed or determined to be confidential under this part may be disclosed to the public by the Administrator notwithstanding such claim or determination, if disclosure would be in the public interest as follows:

(1) Information obtained under chapter 325, 327, 329 or 331 of title 49

of the United States Code (formerly under the Motor Vehicle Information and Cost Savings Act) may be disclosed when that information is relevant to a proceeding under the chapter under which the information was obtained.

(2) Information obtained under chapter 301 of title 49 of the United States Code (49 U.S.C. 30101 *et seq.*), relating to the establishment, amendment, or modification of Federal motor vehicle safety standards (FMVSS), may be disclosed when relevant to a proceeding under the chapter.

(3) Except as specified in the next sentence, information obtain under Chapter 301 of title 49 of the United States Code (49 U.S.C. 30101 *et seq.*), related to a possible defect or noncompliance, shall be disclosed when the Administrator decides the information will assist in carrying out sections 30117(b) and 30118 through 30121 of title 49 or that is required to be disclosed under 30118(a) of title 49, except as provided in paragraph (a)(4) of this section. Early warning information collected pursuant to regulations promulgated under section 30166(m) of title 49 (which was added by section 3(b) of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act) shall not be disclosed under this section, unless the Administrator determines the disclosure of the information will assist in carrying out sections 30177(b) and 30118 through 30121 of title 49.

(b) No information will be disclosed under paragraph (a) of this section unless the submitter of the information is given written notice of the Administrator's intention to disclose information under this section. Written notice will be given at least ten (10) working days before the day of release, unless the Administrator finds that shorter notice is in the public interest. The notice under this paragraph will include a statement of the Administrator's reasons for deciding to disclose the information, and will afford the submitter of the information an opportunity to comment on the contemplated release of the information. The Administrator may also give notice of the contemplated release of information to other persons and may allow these persons the opportunity to comment. In making the determination to release information pursuant to this section, the Administrator will consider ways to release the information that will cause the least possible adverse effects to the submitter.

(c) Notwithstanding any other provision of this part, information that has been determined or claimed to be confidential may be released:

(1) To a committee of Congress;

(2) Pursuant to an order of a court with valid jurisdiction;

(3) To the Office of the Secretary, U.S. Department of Transportation and other Executive branch offices or other Federal agencies in accordance with applicable laws;

(4) With the consent of the submitter of the information; and

(5) To contractors, if necessary for the performance of a contract with the agency or any Federal agency, with specific prohibitions on further release of the information.

Appendix A—Certificate in Support of Request for Confidentiality

Certificate in Support of Request for Confidentiality

I, _____, pursuant to the provisions of 49 CFR part 512, state as follows: (1) I am (official) and I am authorized by (company) to execute documents on behalf of (company);

(2) The information contained in (pertinent document(s)) is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) (as incorporated by reference in and modified by the statue under which the information is being submitted);

(3) I hereby request that the information contained in (pertinent document(s)) be protected for (requested period of time);

(4) I have personally inquired of the responsible (company) personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside (company);

(5) Based upon such inquiries, to the best of my knowledge, information and belief, the information for which (company) has claimed confidential treatment has never been released or become available outside (company); (except as hereinafter specified):

(6) There have been no prior determinations by NHTSA, other Federal agencies, or Federal courts relating to the confidentiality of the submitted information; (except as hereinafter specified):

(7) I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside (company) because of unauthorized or inadvertent disclosure (except as stated in Paragraph 5); and

(8) I certify under penalty of perjury that the foregoing is true and correct. Executed on this the __ day of _____, _____. (If executed outside of the United States of America: I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct). (signature of official)

Appendix B—Class Determinations

(a) The Office of Chief Counsel has determined presumptively that the following classes of information would cause competitive harm if released:

(1) Blueprints and engineering drawings containing process and production data where the subject could not be manufactured without the blueprints or engineering drawings except after significant reverse engineering;

(2) Future specific model plans (to be protected only until the date on which the specific model to which the plan pertains is first offered for sale); and

(3) Future vehicle production or sales figures for specific models (to be protected only until the termination of the production period for the model year vehicle to which the information pertains);

(b) The Office of Chief Counsel has determined presumptively that the following classes of information would not cause competitive harm if released:

(1) Consumer complaints and related documents required to be submitted to the agency;

(2) Reports and data required to be submitted to the agency related to property damage claims;

(3) Reports and data required to be submitted to the agency related to warranty claims; and

(4) Test procedures used to certify compliance with applicable Federal motor vehicle safety standards (FMVSS) and the results of such testing.

Appendix C—OMB Clearance

The OMB clearance number for this regulation is 2127–0025.

National Highway Traffic Safety Administration.

Issued on: April 19, 2002.

Jeffrey W. Runge,

Administrator.

[FR Doc. 02–10181 Filed 4–29–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 041802C]

RIN 0648–AP76

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

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

ACTION: Notice of availability of a fishery management plan; request for comments.

SUMMARY: NMFS announces that the New England Fishery Management Council (Council) has submitted the Atlantic Deep-Sea Red Crab Fishery Management Plan (FMP) for Secretarial review and is requesting comments from the public. The FMP is intended to prevent overfishing and maintain fleet capacity appropriate to the resource abundance.

DATES: Comments must be received on or before July 1, 2002.

ADDRESSES: Comments on the FMP should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on Red Crab FMP.''

Copies of the FMP, its Regulatory Impact Review (RIR) and the Initial Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS) are available from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, The Tannery - Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: E. Martin Jaffe, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

SUPPLEMENTARY INFORMATION: The FMP proposes an overfishing definition and implementation of the following measures: A target total allowable catch (TAC) level for the management area; a procedure for the development and revision of annual specifications; a framework adjustment process; a limited access program for the directed fishery; trip limits and incidental harvest allowances; permitting and reporting requirements, including an automated Interactive Voice Response (IVR) reporting system for limited access vessels; a Days-at-Sea (DAS) allocation effort control program; gear restrictions and gear marking requirements; trap/pot limits; restrictions on processing at sea; restrictions on retaining and landing female crabs in the directed fishery; mutilation restrictions; and other measures for administration and enforcement.

A proposed rule that would implement the FMP may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on the FMP to be considered in the approval/disapproval decision on the FMP. All comments received by July 1, 2002, whether specifically directed to the FMP or the proposed rule, will be considered in the approval/disapproval decision on the FMP. Comments received after that date will not be considered in the decision to approve or disapprove the FMP.

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

Dated: April 25, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–10598 Filed 4–29–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 83

Tuesday, April 30, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Availability of a New Partially Validated Simulation Model of the Cotton Crop

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Over the last 30 years, the U.S. Department of Agriculture's (USDA) Agricultural Research Service (ARS) has conducted a wide range of research on cotton which is an agriculturally important crop in the U.S. Part of this effort involved the development of research models which subsequently evolved into a series of ''production models'' designed to serve as decision aids to cotton producers. In 1996, ARS decided to develop a new ''second generation'' Cotton Production Model (CPM) that would retain the best features of the earlier versions in a new, more versatile, and more user friendly framework. This process was completed to the stage of beta-testing by 1999, when the need to redirect limited resources to other priorities caused ARS to decide not to complete the validation process. The model is now being released for further development. ARS believes that CPM, while only partially validated, has the potential to make useful contributions to American cotton producers when completed. For these reasons, ARS decided to make the model's source codes available for further development and commercialization to any researcher or company interested in cotton production, precision agriculture, or related technologies.

DATES: The CPM is available as of February 7, 2002.

FOR FURTHER INFORMATION CONTACT: Technology Transfer Point of Contact: Dr. Richard J. Brenner, USDA–ARS, Office of Technology Transfer, George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, Maryland 20705–5131, Tel.: 301 504–6905, e-mail: *Richard.Brenner@nps.ars.usda.gov.*

Validation Technical Point of Contact: Dr. Gretchen Sassenrath-Cole USDA–ARS, Application and Production Research Unit, PO Box 36, Stoneville, Mississippi, Tel.: 662–686–5289, e-mail: *gsassenrath@ars.usda.gov.*

Technical Point of Contact: Dr. V. R. Reddy, Plant Physiologist/Research Leader, Alternate Crops and Systems Lab., Bldg 007, Rm 116, BARC–W, 10300 Baltimore Avenue, Beltsville, Maryland 20705, Tel.: 301–504–5806, e-mail: *vreddy@asrr.arsusda.gov.*

SUPPLEMENTARY INFORMATION: A new process-based cotton model, CPM, has been developed to simulate the growth and development of upland cotton (Gossypium hirsutum L.) throughout the growing season with minimal data input. CPM predicts final cotton yield for any combination of soil, weather, cultivar, and sequence of management actions. The executable code, source code, and supporting documentation for the model are available on the webpage of the Office of Technology Transfer, USDA–ARS *(http://ott.ars.usda.gov/).* The personal computer system requirements to run CPM are minimal, requiring IBM-compatability, Windows 95+, 64K RAM, and 4Mb hard disk space.

The model draws upon the latest scientific knowledge available, and is intended to be used with a wide variety of cotton types across the entire U.S. Cotton Belt. CPM is written in C++ using a new modular structure that allows flexibility and adaptability. This object-oriented structure should allow modules to be incorporated into process-based models of other crop species (see Acock, B. and V. R. Reddy. 1977. Designing an object-oriented structure for crop models. Ecological Modeling 94: 33–44). In addition to being modular and generic, CPM has other advantages over earlier models. Compared to previous cotton models, CPM is more robust, more user-friendly, more easily maintained, and more easily updated with future advances in science. The algorithms that simulate crop growth are derived in part from the best of each of the previous models, and they incorporate new physiological information as well. A new feature of CPM is that it incorporates 2DSOIL, an excellent up-to-date soil and root process model (see Timlin, D. J., Y. Pachepsky, and B. Acock. 1996. A design for a modular, generic soil simulator to interface with plant models. Agronomy Journal 88:162–169). 2DSOIL tracks water movement through the soil-plant-atmosphere continuum with hourly time-steps. It also incorporates a new model of plant water relations that responds realistically to water stress. CPM has updated treatments of carbon and nitrogen stresses compared to previous models, and it is designed for easy addition of responses to phosphorus and potassium. Because the growth of each leaf, internode and fruit is simulated separately, CPM should be easily linked to pest or disease models.

CPM requires fewer and simpler data inputs from users than do previous models. Required inputs at the start of each run include data on weather, soil, cultivar characteristics, and management actions. No prior knowledge of cotton growth is required and no soil or plant measurements are required during the season. Mid-season correction of simulated plant growth is unnecessary. Weather data are best obtained from a weather station near the field, though use of readily available county weather data produces acceptable results. Soils data from the database of the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS), generally are sufficient to run CPM. These data are maintained and updated by NRCS, and can be accessed if one knows the soil type in which the crop is grown. Data on management actions are entered by the user, and are similar to those of other modern models.

In 1998, CPM underwent limited testing and revision using data from several locations across the U.S. Cotton Belt. In 1999, the evaluation was much more extensive, using data from about 20 locations across the Cotton Belt in a cooperative effort involving ARS scientists, University scientists, and Cooperative Extension Specialists and Agents. The testing utilized the most current cultivars and management practices, including genetically engineered cultivars and ultra-narrow row spacings. Evaluation testing was an independent process from model development and calibration (parameterization). In one test, the

model was calibrated using data obtained in 1997 for the variety DPL 5415 RR in Starkville, Mississippi, on a Marietta soil. Calibration of the model involved determining cultivar-specific values of 11 parameters to provide a best fit between model output and measured crop characteristics (e.g., plant height, number of nodes, stem weight, fruit count, fruit weight). The calibrated model accurately predicted plant growth from the same cultivar grown in Stoneville, Mississippi, on a Bosket loam in 1998. Notably, 1997 was a cool wet year, whereas 1998 was a hot dry year. The model's success in simulating responses to these environmental and soils differences indicates its robustness and utility.

CPM has the potential to be useful as a decision aid for cotton farmers and crop production consultants. If fully developed, it would be a valuable tool to optimize management inputs such as irrigation, fertilization, plant growth regulators, and defoliant application prior to harvest. In its current version, however, CPM has not yet been fully validated to be useful as a decision aid. The released version of CPM should be considered an advanced model suitable for research purposes. ARS does not endorse its use for any other purpose at this time. Of particular importance to a decision aid model is the user interface. The interface under which CPM has been developed and tested is one that was earlier developed for the soybean model, GLYCIM, and has been documented elsewhere (Acock, B., Pachepsky, Y. A., Mironenko, E. V., Whisler, F. D., and Reddy, V. R. 1999. GUICS: A Generic User Interface for On-Farm Crop Simulations. Agronomy Journal. 91:657–665). However, this interface is not part of the current release, and the user will need to develop or adapt one for his or her own needs.

The CPM Development Team was an *ad hoc* group drawn from numerous ARS laboratories across the Cotton Belt. Dr. Basil Acock, ARS, Beltsville, Maryland, led the team that developed CPM to its present stage. Drs. Rick Olson and Yakov Pachepsky were the other central members of the development team. The other team members included, Drs. Eugene Marenenko, Avi Marani, Ron Sequeira, and Hal Lemmon. The CPM Validation Team was led by Dr. Gretchen F. Sassenrath-Cole, ARS, Stoneville, MS, with a very large team of cooperators.

ARS is releasing the source code and documentation of CPM at this time, under the Authority: 35 U.S.C. 207, so that interested parties can continue to develop the model for their own needs and purposes. ARS does not foresee providing monetary or technical support for the efforts of others to refine, adapt, or use this model, and provides no warranty for its use for any purpose. ARS does not reserve any rights or interests in the work that may be performed by others to refine or adapt it. ARS does reserve the right to continue its own refinement of the current version of the model at a later date, should program needs require it.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 02–10565 Filed 4–29–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 02–013N]

Exemption for Retail Store Operations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of adjusted dollar limitations.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing automatic increases in the dollar limitations on sales of meat and meat food products and poultry products to hotels, restaurants, and similar institutions that do not disqualify a store for exemption from Federal inspection requirements. By action of FSIS' regulations, for calendar year 2002, the dollar limitation for meat and meat food products has increased from $44,900 to $47,000 and for poultry products from $39,800 to $41,600. These increases are based on price changes for these products evidenced by the Consumer Price Index (CPI).

EFFECTIVE DATE: This notice is effective April 30, 2002.

FOR FURTHER INFORMATION CONTACT: For further information contact Daniel Engeljohn, Ph.D., Director, Regulations and Directives Development Staff, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700; telephone (202) 720–5627, fax (202) 690–0486.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide that the statutory provisions requiring inspection of the slaughter of livestock or poultry and the preparation or processing of products thereof do not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service to consumers at such establishments (21 U.S.C. 454(c)(2)and 661 (c)(2)). In §§ 303.1(d) and 381.10(d), respectively (9 CFR 303.1(d) and 381.10(d)), FSIS regulations address the conditions under which requirements for inspection do not apply to retail operations.

Under these regulations, sales to hotels, restaurants, and similar institutions disqualify a store for exemption if they exceed either of two maximum limits: 25 percent of the dollar value of total product sales or the calendar year dollar limitation set by the Administrator. The dollar limitation is adjusted automatically during the first quarter of the year if the CPI, published by the Bureau of Labor Statistics, indicates an increase or decrease of more than $500 in the price of the same volume of product for the previous year. FSIS publishes a notice of the adjusted dollar limitations in the **Federal Register**. (See paragraphs (d)(2)(iii)(b) and (d)(2)(vi) of §§ 303.1 and 381.10.)

The CPI for 2001 reveals an average annual price increase for meat and meat food products of 4.6 percent and for poultry products of 4.4 percent. When rounded off to the nearest $100.00, the price increase for meat and meat food products is $2,100.00 and for poultry products is $1,800.00. Because the price of meat and meat food products and the price of poultry products have increased by more than $500, in accordance with §§ 300.1 (d)(2)(iii)(b) and 381.10 (d)(2)(iii)(*b*) of the regulations FSIS has increased the dollar limitation on sales to hotels, restaurants, and similar institutions from $44,900 to $47,000 for meat and meat food products and from $39,800 to $41,000 for poultry products for calendar year 2002.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this final rule, FSIS will announce and provide copies of this **Federal Register** notice in the *FSIS Constituent Update*. FSIS provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is

used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible.

For more information or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: April 24, 2002.

William J. Hudnall,

Acting Administrator.

[FR Doc. 02–10538 Filed 4–29–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai (KNF) and Idaho Panhandle National Forests (IPNF); Montana, Idaho and Washington; Revised Land and Resource Management Plans

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement in conjunction with revision of the Land and Resource Management Plans (hereafter referred to as Forest Plan or Plans) for the Kootenai and Idaho Panhandle National Forests (Kootenai Idaho Panhandle Zone, hereafter referred to as KIPZ) located in Lincoln, Sanders, and Flathead counties in Montana; Bonner, Boundary, Kootenai, Shoshone and Benewah, Latah, and Clearwater counties in Idaho; and Pend Oreille county in Washington.

SUMMARY: The USDA—Forest Service will prepare an environmental impact statement in conjunction with the revision of Land and Resource Management Plans for the KIPZ. This notice describes the initial revision topics and issues with the current Forest Plans, estimated dates for filing the environmental impact statement, information concerning public participation, and the names and addresses of the agency officials who can provide additional information.

DATES: Comments concerning the scope of the analysis must be received in writing by December 1, 2002. The draft environmental impact statement is expected by December 2003 and the final environmental impact statement is expected by April 2005.

ADDRESSES: Send written comments and suggestions to Forest Supervisor, c/o Forest Plan Revision, Kootenai National Forest, 1101 W Hwy 2, Libby, MT 59923.

FOR FURTHER INFORMATION CONTACT: Joe Krueger at (406) 293–6211 or Gary Ford at (208) 765–7478.

SUPPLEMENTARY INFORMATION:

Plan revisions are warranted in light of the combined effects of multiple needs for change. The preliminary revision issues have been developed from discussions with Kootenai and Idaho Panhandle National Forests employees, our Monitoring and Evaluation Reports, current science and assessments, and our daily contact with our public. The preliminary issues have been divided into two categories:

Revision Topics—This category includes topics for which resource conditions, technical knowledge, or public perception of resource management have created a ''need for change'' in the Forest Plans. These topics generally would be significant amendments because their resolution could result in changes to management direction over large areas of the Forests, changes in the mix of goods and services that the Forests provide, and changes to other decisions made in the Forest Plans. They involve choices in management direction where there is no clear public consensus on the best course of action.

Other Revision Items—A number of items were identified that need to be addressed in the Forest Plans, but do not meet the above criteria for Revision Topics. In general, these items represent inadequate or out-of-date Forest Plan direction and addressing these items would not require a significant amendment to the Forest Plans. There appears to be general consensus on how to resolve the issue by rewriting and updating the Forest Plans Standards and Guidelines during Forest Plan Revision. Following are the Revision Topics/Preliminary Issues that have been identified to date:

I. Revision Topics

National Forest System lands are capable of contributing essential elements in managing for sustainability. Sustainability is widely recognized as the overarching objective of land and resource management. Sustainability in land management has three components: ecological, economic, and social. These different components of sustainability are interrelated. The sustainability of ecological systems is a necessary prerequisite for strong, productive economies and enduring human communities. At the same time, we compromise human welfare if we fail to sustain vital, functioning ecological systems. In addition, strong economies and communities are often a prerequisite to societies possessing the will and patience needed to sustain ecological systems.

The revision topics have been developed around the ecological, economic, and social components of sustainability. The planning questions for each revision topic provide information that further defines the topic and how we intend to address it in plan revision.

Ecological Components of Sustainability

Ecological sustainability is defined as: ''The ability to maintain diversity, productivity, resilience to stress, health, and yields of desired values, resource uses, products, or services over time in an ecosystem while maintaining its integrity.'' (cited from Sustaining Ecosystems: A Conceptual Approach, USDA Forest Service, Pacific Southwest Research Station, R5–EM–TP–001, p. 212).

Topic 1—Terrestrial

Forest plan monitoring, geographic area assessments, the Northern Region Overview, and the Interior Columbia River Basin Ecosystem Management Project have identified problems in maintaining terrestrial sustainability on our national forest lands. Examples of findings in these assessments indicate we are lacking in early seral tree species and have an increasing amount of shade-tolerant, fire intolerant, and insect and disease prone tree species dominating the landscape. Decades of fire suppression have resulted in higher fuel loading and landscapes that may pose risk to terrestrial sustainability. There is a reduction in large snags on portions of the landscape. Past timber harvest has resulted in a decrease in interior habitat in late successional stands.

Planning Question #1

What structure, composition, and function of vegetation components are needed to contribute to long-term terrestrial sustainability?

Planning Question #2

What species are at risk and which are not and what strategies are needed to contribute to sustaining all native and desired non-native species?

Proposed Actions

Based on monitoring results, preliminary analyses, and public input, the following actions may be proposed in one or more EIS alternative:

• Define the desired conditions for contribution of national forest system lands to terrestrial ecosystem sustainability for appropriate temporal and spatial scales.

• Base management practices on understanding and consideration of natural disturbance processes, including the intensity, frequency, and magnitude of those disturbance regimes.

• Develop a strategy for aggressively treating noxious weed populations through various means, including mechanical, biological and chemical control.

• Develop a monitoring strategy that will measure appropriate indicators of ecological sustainability at multiple scales, and will serve to facilitate adaptive management.

Topic 2—Aquatic

Forest Plan monitoring, geographic area assessments, the Northern Region Overview, and Interior Columbia River Basin Ecosystem Management Project have identified problems with the hydrologic condition of many of our watersheds and aquatic life in our national forest lands. Approximately 165 stream segments or water bodies have been listed by the States as impaired water quality under section 303(d) of the Clean Water Act. Landscape assessments have found that approximately 20 percent of our wastersheds are ''not properly functioning,'' and 30–50 percent may be ''functioning at risk.'' In recent years under the Endangered Species Act, two fish species have been listed as ''threatened'' or ''endangered,'' and three additional species are being studies for possible future listing.

Planning Question #1

What are the conditions and trends of the Forests' watersheds, riparian areas, and aquatic biota? How well do the aquatic systems' condition, status and trend contribute to aquatic sustainability?

Planning Question #2

What management strategies are needed to effectively contribute to the maintance or restoration of aquatic sustainability?

Proposed Actions

Based on monitoring results, preliminary analyses, and public input, the following actions may be proposed in one or more EIS alternative:

• Provide strategies that maintain the conditions and water quality of watersheds that are ''properly functioning'' and are fully supporting beneficial uses.

• Provide strageties that will restore watershed conditions and water quality in ''not properly functioning,'' and ''functioning-at risk'' watersheds adequately to fully support beneficial uses.

• Facilitate Total Maximum Daily Load (TMDL) implementation plans and schedules coordinated with the States' restoration priorities in watersheds that contain water quality limited (303d) segments and waterbodies.

• Develop strategies that will protect, and where feasible, recover native aquatic and riparian dependent species and prevent the introduction and spread of undesirable non-native aquatic species.

• Develop strategies that will restore aquatic resources, including water quality, watershed systems, streams, lakes and other water bodies, wetlands, riparian areas, and floodplains.

• Prioritize watershed systems for restoration by designing and applying effective Best Management Practices and watershed-scale restoration projects cooperatively with States, Tribes, adjacent land interests, and the public.

Topic 3—Soil Productivity

The inherent capability of soil to support vegetative growth is central to forest management and is rooted in our land ethic and resource laws. Soil physical and chemical status, within acceptable ranges, is an indicator of maintaining or improving soil productivity. Some soil nutrients are derived from parent materials (geological types); others from organic debris (woody or vegetative materials), wind or water deposits, climate and other factors.

Management practices, such as logging or prescribed fire, may disturb the natural balance of soil nutrients and physical condition, and, particularly with potassium-limited soils, contribute to regeneration problems, slowing growth, and thereby increasing susceptibility to insects and disease. Current research by the *Intermountain Forest Tree Nutrition Cooperative* is showing that potassium is inherently very low within portions of the Precambrian meta-sedimentary rocks known as the Belt Super-group. Approximately 80% of the KIPZ is located on this Belt Super-group formation. This research indicates that 20–30% of this area may be inherently deficient in potassium. Limited potassium nutrition has been shown to significantly affect Douglas-fir root biochemistry, making these trees much more susceptible to insects and disease.

Other key soil elements that address sustainability of forest soil productivity are detrimental disturbances (compaction, displacement, erosion, and severe burns) and nutrient cycling (residual organics debris). These elements are adequately addressed in the current Forest Plans, FSH direction and best management practices, and will not be part of the plan revision topics.

Planning Question #1

Does the soil nutrient conditions, and trends support long-term soil productivity on nutrient limited (i.e., potassium-limited) sites?

Proposed Actions

Based on monitoring results, preliminary analyses, and public input, the following actions may be proposed in one or more EIS alternative:

• Develop criteria to maintain and restore soil productivity on potassium and other nutrient limited soils.

Social and Economic Components of Sustainability

Social and economic components of sustainability include meeting the economic, social, aesthetic, and cultural needs and desires of local communities without reducing the capacity of the environment to provide for the needs and desires of future generations.

Topic 4—Production and Use Levels

National Forest System lands contribute many values, services, outputs, and uses that allow economies and communities to persist, prosper, and evolve.

Recreation, the production of wood fiber, grazing of livestock, and mining are important historic and current uses of the Forest. The level of production of these commodities and recreation uses affects the social and economic environment of local communities. These production and use levels must be sustainable in order to contribute to sustainable economies and communities. Monitoring indicates that wood fiber production levels are far below those estimated to occur in the current Forest Plans. Timber harvest levels for the past 13 years are less than 50% of those projected in the current Forest Plans. Recent assessments indicate that motorized and non-motorized recreation use has increased above levels projected in the current Forest Plans.

Planning Question #1

What are the jobs, income, costs and values associated with the Forest production and use levels?

Planning Question #2

How are the lifestyles, values, and beliefs of local communities affected?

Proposed Actions

Based on monitoring results, preliminary analyses, and public input, the following actions may be proposed in one or more EIS alternative;

• Identify acres suitable for timber production, suitable for grazing, and areas to be withdrawn from mineral entry.

• Identify timber sale volume, grazing levels, mineral development potential, and recreation use associated with each alternative. Estimate the jobs and income generated by these levels of production and use, and their contribution to local communities.

• Identify how scenery management may be used in conjunction with ecosystem management objectives.

• Incorporate the social and cultural values into the alternative development and desired future conditions.

Topic 5—Access and Recreation

Access to national forest lands is one of the most controversial elements in forest management. Since the 1987 Forest Plans were developed, motorized and non-motorized forms of travel have increased and become more diversified. The advent of mountain bikes and all-terrain vehicles, the growing popularity of four-wheel-drive vehicles and snowmobiles, and increasing non-motorized uses such as hiking, backcountry skiing, and snowshoeing, are all competing for the same land base.

Planning Question #1

What are the types, quantities, and distribution of access and recreation opportunities?

Planning Question #2

What are the desired future conditions related to access and recreation?

Proposed Actions

Based on monitoring results, preliminary analyses, and public input, the following actions may be proposed in one or more EIS alternative:

• Identify a road and trail transportation network that provides an environmentally sound and socially responsive travel management system.

• Specify criteria for developing access strategies by appropriate modes and season of use.

• The Forests may be zoned into various classifications of ''recreation opportunity spectrum'' for summer and winter uses.

Topic 6—Fire Risk

Decades of active fire suppression have altered some ecosystems by increasing fuel levels beyond an acceptable range. In addition, increasing numbers of people are moving from urban areas toward more rural near public lands. This has resulted in more homes and other structures being built near and around national forests. As people, homes, and structures increasingly occupy the wildland/urban interface and as hazard fuels continue to accumulate, a high risk and volatile situation needs to be addressed. Geographic area assessments, the Northern Region Overview, and Interior Columbia River Basin Ecosystem Management Project have identified an increase in fuel loading, duff depth, stand density, and a fuel ladder that can carry fire from the surface into the tree crowns. As a result, wildfire intensity has increased.

Planning Question #1

Where and when will we manage fire? Where and when will we manage fuels to reduce risks to communities and the environment? How do we balance risks posed by fire and the benefits to the ecosystem that fire provides?

Proposed Actions

Based on monitoring results, preliminary analyses, and public input, the following actions may be proposed in one or more EIS alternative:

• Develop fire management units (FMU's) consistent with Land and Resource Management Plans that identify appropriate management response strategies for each unit.

• Identify FMU's where wildland fire use, fire protection, and limited or modified wildland fire use is an appropriate tool.

• Identify lands by condition class or risk category.

• Establish monitoring and evaluation programs and measures in Land and Resource Management Plan revisions for restoration activities in fire-adapted ecosystems.

Topic 7—Inventoried Roadless Areas and Recommended Wilderness

Inventoried Roadless Areas (IRAs) continue to be a topic of interest and controversy to many people in north Idaho and northwest Montana. The IPNF has 47 IRAs totaling 823,000 acres. The KNF has 43 IRAs totaling 638,000 acres. Recent efforts to resolve this issue at the national level have been unsuccessful, leaving the issue to be addressed at the local level during Forest Plan Revision. The 1982 Planning Regulations require that we inventory, evaluate and consider all roadless areas for possible inclusion in the National Wilderness Preservation System.

Planning Question #1

Which IRAs have potential for Wilderness? Which of the IRAs should be recommended for Wilderness? How should the IRAs not recommended for wilderness be managed?

Proposed Actions

Based on monitoring results, preliminary analyses, and public input, the following actions may be proposed in one or more EIS alternative:

• Identify and recommend roadless areas for wilderness designation.

• Provide management direction for those roadless areas not recommended for wilderness designation.

II. Other Revision Items

Preliminary topics discussed in this section are also important issues to be addressed during Plan revision. However, they are likely not substantial or widespread enough to be major drivers in the EIS alternative themes or forest-wide management area prescriptions and standards.

Special Areas

The planning area includes several unique or outstanding areas and resources of outstanding physical, biological, or social interest. Collectively these are known as ''special areas.'' Potential formal designations of special areas may include Wilderness (see Revision Topic 7, above); Wild and Scenic Rivers; Research Natural Areas (RNAs); and Special Interest Areas (SIAs) with scenic, historical, geological, botanical, zoological, paleontological, archaeological, or other special characteristics. Research Natural Areas have been established on both Forests. The Plan revision will address establishment of RNAs and SIAs, including an assessment of the needs for additions to the RNA and SIA network.

Planning Questions—Special Areas

• Which rivers, or river segments, on the Forests are potentially eligible for addition to the Wild and Scenic Rivers System?

• Are there sufficient RNAs and SIAs designated within the Planning Zone to meet the intent of the national and regional RNA Program and intent of SIA objectives?

• Do designated RNA's need management plans?

• Do designated SIAs need reviews and objectives assigned?

• Which portions of the Forest qualify for other special area designations?

Heritage

There are currently several historic properties representing the historic period (50–200 years ago) and the prehistoric period (8,000 to 200 years ago) on the Forests. Many of these properties have been evaluated and are eligible to the National Register of Historic Place. Many other properties have not been evaluated. Historic properties are protected by law. Portions of the Forests are part of the traditional homeland of the Kootenai and Salish, Kalispel, Coeur d' Alene, Colville, Pend Oreille, Nez Perce, and Spokane Tribes. The prehistoric properties on the Forest are considered by the Tribes as part of their heritage and they attach traditional cultural significance to these sites.

Planning Questions—Heritage

• Should landscapes containing concentrations of cultural or historic resource properties that are potentially eligible for, or eligible to the National Register of Historic Places, receive special land management prescriptions?

• What kinds of cooperation are needed between the Forest Service, the Tribes, other agencies, and private individuals to protect these areas?

Lands

Landownership adjustment is generally considered a tool to accomplish resources or socieconomic objectives, rather than a driving issue in and of itself. Plan revision offers an opportunity to develop agreements about desired future patterns of land ownership that could be achieved through exchanges or purchases. Access to public land is often a related concern where private land development is happening, or likely will occur, adjacent to the Forests.

Planning Questions—Lands

• Which areas of the Forests need strengthened programmatic direction to guide land ownership pattern adjustments?

• How can goals, objectives, standards, and guidelines for lands adjustment be improved to prioritize agency action, enhance management efficiency, and assist local communities?

Purpose and Need for Action

The existing Forest Plans were approved in 1987, which indicates it's been approximately 15 years since they were approved. Experience and monitoring have shown the need for changes in management direction for some resources or programs. Several sources have highlighted needed changes in the current Forest Plans. These sources include:

• Public involvement, which has identified new information and public values;

• Monitoring and scientific research, which have identified new information and knowledge gained;

• Forest plan implementation, which has identified management concerns to find better ways for achieving desired conditions; and

• Changes in laws, regulations, and policies.

In addition, direction specific to restoration strategies are not in place to guide management under our current Forest Plans. Changing public views and changes in information and scientific understanding of these ecosystems has also occurred. Some new information is a product of research, while other information has resulted from changes in technology.

Proposed Action: See specific Proposed Actions under each Revision Topic/Preliminary Issue in the Supplementary Information section above.

Responsible Official: The Responsible Official is Brad Powell, Regional Forester, Northern Region, 200 East Broadway, PO Box 7669, Missoula, Montana 59807.

Nature of Decision To Be Made

Pursuant to Part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Forester for the Northern Rockies Region gives notice of the agency's intent to prepare an environmental impact statement for the revision effort described above. The Forests are beginning an environmental analysis and decision-making process for this proposed action so that interested or affected people can participate in the analysis and contribute to the final decision. The Forest Plans describe the intended management of National Forests. According to 36 CFR 219.10(g), Land and Resource Management Plans are ordinarily revised on a 10 to 15 year cycle. Key decisions made in the Forest Plan for long-term management of National Forests are:

• Establishment of forest-wide multiple use goals and objectives, 36 CFR 219.11(b);

• Establishment of forest-wide management requirements (forest-wide standards and guidelines), 36 CFR 219.13–219.17;

• Establishment of management area direction, 36 CFR 219.11;

• Designation of suitable timber land and establishment of allowable sale quantity. Designation of land suitable for grazing and browsing. Identification of lands suitable and available for oil and gas leasing. Provision for a broad spectrum of forest and outdoor recreation opportunities. 36 CFR 219.14–219.16, 219.20–219.21;

• Establishment of requirements for monitoring and evaluating the implementation of the revised plan to meet the requirements of 36 CFR 219.11(d);

• Documentation that we will/will not recommend any further additions to the wilderness preservation system.

A range of alternatives will be considered when revising the Forest Plans. The alternatives will present different options to address the revision topics. A reasonable range of alternatives will be evaluated and reasons given for eliminating some alternatives from detailed study. A ''no-action alternative'' is required, meaning that management would continue under the existing Plan. Alternatives will provide different ways to address and respond to public issues, management concerns, and resource opportunities identified during the scoping process. In describing alternatives, desired vegetation and resource conditions will be defined. Resource outputs will be estimated in the Forest Plan based on achieving desired conditions.

Scoping Process

Opportunities will be provided to discuss the Forest Plan revision. The public is invited to help identify issues and define the range of alternatives to be considered in the environmental impact statement. Forest Service officials will lead these discussions, helping to describe issues and preliminary alternatives. These officials will also explain the environmental analysis process and the disclosures of that analysis, which will be available for public review. Comments identifying issues for analysis and the range of alternatives are encouraged. Issue identification (scoping) meetings will be scheduled for early summer through November 2002. Alternative development meetings will be held in the fall of 2002 and early 2003. Public notice of dates, times, and locations for specific meetings will be provided in local newspapers and posted on the Forest's web sites: *http://www.fs.fed.us/rl/kootenai/* or *http://www.fs./fed./us/rl/ipnf.* Additionally, we will send notices/newsletters to those on the forest plan revision mailing list.

Requests to be placed on this mailing list should be sent to the comment address stated above.

Consulting and Collaborating With Tribal Governments

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. In fulfillment of our Government-to-Government responsibilities, the Forest Service will be working with Tribal governments in order to address natural and cultural resource issues, treaty rights, and any issues that significantly or uniquely affect Tribes. Meaningful consultation will assure that tribal issues will be addressed within the most critical context of current and projected interests, values, objectives for and uses of national forest lands.

Comment Requested

This notice of intent initiates the scoping process, which guides that development of the environmental impact statement. This revision effort is being undertaken to develop management direction that may help contribute to basic agency goals of ecological, social and economic sustainability.

Early public participation will identify the topics to be addressed during Forest Plan revision. The preceding discussion of preliminary revision topics is based upon our assessment of a Plan monitoring and evaluation results; public and agency input during project planning and Plan amendment efforts; and socioeconomic, demographic and political changes. We expect this list to change as people engage in the planning process.

An atmosphere of openness is one of the objectives of the public involvement process, in which all members of the public feel free to share information with the Forest Service regularly. All parts of this process will be structured to maintain this openness.

The Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies who are interested in or may be affected by the proposed action (36 CFR 219.6). The Forest Service is also looking for collaborative approaches with members of the public who are interested in forest management. Federal and state agencies and some private organizations have been cooperating in the development of assessments of current biological, physical, and economic conditions. This information will be used to prepare the Draft Environmental Impact Statement (DEIS). The range of alternatives to be considered in the DEIS will be based on public issues, management concerns, resource management opportunities, and specific decisions to be made. Public participation will be solicited from known interested and affected public. News releases will be used to give the public general notice, and public scoping opportunities will be offered in numerous locations. Public participation activities will include (but will not be limited to) requests for written comments, open houses, focus groups, field trips, and collaborative forums.

Public participation will be especially important at several points along the way. The first formal opportunity to comment is during the scoping process (40 CFR 1501.7). Scoping includes (1) Identifying potential issues, (2) from these, identifying significant issues or those that have been covered by prior environmental review, (3) exploring alternatives in addition to No Action, and (4) identifying the potential environmental effects of the proposed action and alternatives.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment by the winter of 2003. The comment period on the draft environmental impact statement will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft 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 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. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 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.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

After the comment period on the DEIS ends, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in 2005. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making decisions regarding these revised Forest Plans. The responsible official will document the discussions and reasons for the decisions in Record of Decisions for the revised Plans. The decisions will be subject to appeal in accordance with 36 CFR 217.

Dated: April 23, 2002.

Bradley E. Powell,

Regional Forester, Forest Service-Northern Region.

[FR Doc. 02–10548 Filed 4–29–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Grangeville, Idaho, USDA, Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–

393) the Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Friday, May 17, 2002 in Lapwai, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on May 17, begins at 10:00 AM, at Richard A. Halfmoon Tribal Council Chambers, Main Street and Beavers Grade, Lapwai, Idaho. Agenda topics will include review of proposed projects and project selections. A public forum will begin at 2:30 PM (PST).

FOR FURTHER INFORMATION CONTACT: Ihor Mereszczak, Staff Officer and Designated Federal Officer, at (208) 983–1950.

Dated: April 23, 2002.

Ihor Mereszczak,

Acting Forest Supervisor

[FR Doc. 02–10521 Filed 4–29–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability of a Finding of No Significant Impact for the Sandstone Creek Watershed in Roger Mills County, OK

AGENCY: Natural Resources Conservation Service (NRCS) in Oklahoma, U.S. Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Sandstone Creek Watershed, Roger Mills County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: M. Darrel Dominick, State Conservationist, Natural Resources Conservation Service, 100 USDA, Suite 206, Stillwater, Oklahoma 74074, (405) 742–1206.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, M. Darrel Dominick, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purposes are flood control and watershed protection. The planned works of improvement include the rehabilitation of two aging floodwater retarding structures and associated land treatment for sediment control.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting M. Darrel Dominick.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: April 10, 2002.

M. Darrel Dominick,

State Conservationist, Oklahoma.

[FR Doc. 02–10536 Filed 4–29–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability of a Finding of No Significant Impact (FONSI)

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of a Finding of No Significant Impact for a project on the South Slough Estuarine Research Reserve for review and comment.

SUMMARY: The NRCS has issued a Finding of No Significant Impact (FONSI) for a stream restoration project on the South Slough National Estuarine Research Reserve. A copy of the FONSI and the final Environmental Assessment (EA) is available for public review at the following locations:

- NRCS Office, 382 North Central, Coquille, OR 97423
- Coquille Public Library, Coquille, OR 97423
- Coos County Courthouse, 250 North Baxter, Coquille, OR 97423
- South Slough National Estuarine Research Reserve, Estuarine and Coastal Science Laboratory, Post Office Box 5417, Charleston, Oregon 97420.
- Coos Bay public library, 525 Anderson, Coos Bay, OR 97420
- North Bend public library, 1800 Sherman, North Bend, OR 97459
- Additional copies may be obtained by contacting Tom Purvis, NRCS, 541–396–2841.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Tom Purvis, District Conservationist, Natural Resources Conservation Service (NRCS), 382 North Central, Coquille, OR 97423; (541) 396–5106 (FAX).

FOR FURTHER INFORMATION CONTACT: Tom Purvis, (541) 396–2841.

Dated: April 18, 2002.

C. R. Vigil, Jr.,

Acting State Conservationist, Portland, OR.

[FR Doc. 02–10535 Filed 4–29–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act; Meeting

AGENCY: Rural Telephone Bank, USDA.

ACTION: Privatization Committee Meeting.

TIME AND DATE: 8:30 a.m., Tuesday, May 7, 2002.

PLACE: Conference Room 5030–South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED: The business advisor will present reports on projects completed to date and discuss the proposed outreach program, operational blueprint, and legislative review requirements.

ACTION: Staff Briefing for the Board of Directors.

TIME AND DATE: 2 p.m., Tuesday, May 7, 2002.

PLACE: Conference Room 5030–South Building, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Progress report on privatization study.
2. Office of the Inspector General's audit report on fiscal year 2001 financial statements.
3. Current telecommunications industry issues.
4. Administrative issues.

ACTION: Board of Directors Meeting.

TIME AND DATE: 9 a.m., Wednesday, May 8, 2002.

PLACE: Conference Room 104–A, Jamie L. Whitten Federal Building, U.S. Department of Agriculture, 12th & Jefferson Drive, SW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on Minutes of the February 12, 2002, board meeting.
3. Secretary's Report on loans approved.
4. Treasurer's Report.
5. Privatization Committee Report.
6. Governor's Remarks.
7. Adjournment.

FOR MORE INFORMATION CONTACT: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: April 25, 2002.

Hilda Gay Legg,

Governor, Rural Telephone Bank.

[FR Doc. 02–10722 Filed 4–26–02; 12:14 pm]

BILLING CODE 3410–FR–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Launching Our Communities' Access to Local Television Act of 2000

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of inquiry.

SUMMARY: In light of the rapid changes occurring in the communications and telecommunications industries, the Rural Utilities Service (RUS) is seeking additional information from the public in its efforts to implement the provisions of ''Launching Our Communities'' Access to Local Television Act of 2000,'' Public Law 106–553, 47 U.S.C. 1101–1109 (the ''Act''). The Act provides for a guaranteed loan program intended to facilitate access, on a technologically neutral basis, to signals of local television stations for households located in nonserved areas and underserved areas. The Act also requires the Administrator of RUS to prescribe regulations to implement the Act. RUS is issuing this notice of inquiry to assess the current interest of eligible entities in pursuing applications for funding under the Act, taking into account the following:

(1) Recent commercial and regulatory developments, including pending industry mergers;

(2) The impacts of new technology capable of providing local TV signals;

(3) The effects of the Satellite Home Viewer Improvement Act, Public Law 106–113, *Eg.* 47 U.S.C. 325, 338–9 (''SHVIA''), and

(4) The ability to accomplish the Act objectives utilizing current appropriations.

RUS believes it is beneficial to consider as many options as possible before prescribing regulations and this notice of inquiry will provide RUS with the most current industry information to consider in the drafting of those regulations.

DATES: Interested parties must submit written comments by May 30, 2002.

ADDRESSES: Submit written comments to Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Ave., SW., stop 1590, room 4056–S, Washington, DC 20250–1590. RUS requires, in hard copy, a signed original and 3 copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during normal business hours (7 CFR part 1).

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., stop 1590, room 4056–S, Washington, DC 20250–1590. Phone: 202–720–9554. Fax: 202–720–0810. E-mail: *bpurcell@rus.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 21, 2000, the ''Launching Our Communities'' Access to Local Television Act of 2000,'' was signed into law as Public Law 106–553. The Act provides for the establishment of the Local Television Loan Guarantee Board (the ''Board''), which consists of the Secretaries of Agriculture, Treasury, and Commerce, and the Chair of the Board of Governors of the Federal Reserve System, or their designees. The Board may approve loan guarantees up to 80 percent of $1.25 billion in loans, to facilitate access, on a technologically neutral basis, to signals of local television stations for households located in nonserved areas and underserved areas. The Act stipulates that, among other provisions, the Administrator of RUS shall prescribe regulations to implement the Act and shall issue and otherwise administer loan guarantees approved by the Board. No funds were appropriated for the Act for fiscal year (FY) 2001; hence, RUS was not authorized to draft and implement regulations until program funds were appropriated. The Agriculture FY 2002 Appropriations bill, signed into law on November 28, 2001, included $20,000,000 for the cost of guaranteed loans and $2,000,000 for salaries and administrative expenses to implement the Act. Under the provisions of the Appropriations Act, $258 million in loan guarantee authority is available for FY 2002.

As noted above, regulations must be prescribed on a ''technologically neutral'' basis. However, the $258 million appropriated for loan guarantees may limit the type of technology that can be financed. As the Act also contains several specialized technical and business provisions, RUS encourages interested parties to review the Act in its entirety on the RUS website at: *http://www.usda.gov/rus/telecom/initiatives/initiatives.htm.*

Request for Comment

RUS is requesting comment and discussion on the following topics:

(1) RUS seeks comment on recent changes in the industry that could affect the delivery of local TV signals to households located in nonserved areas and underserved areas. These changes include, among others, the mergers and acquisitions of cable, telephony, and Internet service providers. One developing factor that may have a significant impact on the provision of local TV signals to markets is the recently proposed merger of the two major direct broadcast satellite (DBS) providers. The Act could be noticeably affected, and its goal virtually fulfilled, if certain requirements are imposed on the survivor. In a February 26, 2002, joint press release, the companies involved in the merger proposed to offer every consumer in the continental United States, Alaska, and Hawaii access to satellite-delivered local television signals, thus covering all designated market areas in the United States.

(2) RUS is aware that new technologies have emerged and continue to develop that could provide local TV signals. RUS is seeking additional information on those technologies and, specifically, technologies that would be the most cost effective method of delivering local TV signals to the largest number of nonserved and underserved rural residences not located in the top 40 designated market areas (as that term is defined in 17 U.S.C. 1226(j)).

(3) In addition to the information solicited by the preceding question, RUS also seeks comments regarding what kinds of technology, if not the

same, may be utilized to deliver, and the extent to which rural households located in nonserved and underserved areas could receive, local TV signals using the $258 million authorized for this program this fiscal year only.

(4) RUS is interested in comments from rural TV subscribers, who do not reside in major market TV station areas, concerning what affect, if any, recent Satellite Home Viewer Improvement Act (SHVIA) ''carry one, carry all'' provisions, effective January 1, 2002, and any other regulatory provisions or new products in the marketplace are having on their local TV viewing.

RUS invites interested parties including, but are not limited to, financial and lending institutions, equipment providers, facility and other TV broadcast providers, cable and satellite providers, trade associations, consumer groups, and individuals to provide RUS, in writing, any information or analyses they believe to be relevant to the issues discussed in this Notice and to the implementation of the loan guarantee program.

Dated: April 24, 2002.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 02–10586 Filed 4–29–02; 8:45 am]

BILLING CODE 3410–15–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, May 14–15, 2002, at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, May 14, 2002

9–11 a.m.—Informal Meeting
11–Noon—Planning and Budget Committee
1:30–5 p.m.—Ad Hoc Committee on Passenger Vessels (Closed Session)

Wednesday, May 15, 2002

9–10 a.m.—Technical Programs Committee
10–Noon—Committee of the Whole Briefing on ADA/ABA Final Rule (Closed Session)
1:30 p.m.–2:30—Executive Committee
3–5—Board Meeting

ADDRESSES: The meetings will be held at the Marriott at Metro Center Hotel, 775 12th Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272-0001 (voice) and (202) 272–0082 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items.

Open Meeting

- Executive Director's report
- Approval of the minutes of the March 13, 2002 board meeting
- Committee Reports

Closed Meeting

- Ad Hoc Committee on Water Passenger Vessels
- ADA and ABA Accessibility Guidelines

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings. Persons attending Board meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants.

James J. Raggio,

General Counsel.

[FR Doc. 02–10534 Filed 4–29–02; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following information collection under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 5).

Title: Data Collection for Compliance with Government Performance and Results Act of 1993.

Agency: Economic Development Administration (EDA).

Agency Form Numbers: ED–915, Public Works, Economic Adjustment Infrastructure, and Revolving Loan Fund Reporting Form; ED–916, Economic Development District and Indian Tribe Reporting Form; ED–917, University Center Reporting Form; and ED–918, Trade Adjustment Assistance Reporting Form.

OMB Approval Number: 0610.

Type of Request: New.

Burden: 21,009 burden hours.

Average Hours Per Response: (1) 10 burden hours for the Public Works and Economic Adjustment Infrastructure and Revolving Loan Funds Reporting Form; (2) 10 hours for the Economic Development District and Indian Tribe Reporting Form; (3) 7 hours for the University Center Form; and (4) 6 hours for the Trade Adjustment Assistance Form.

Number of Respondents: Approximately 2,469 respondents.

Needs and Uses: The Economic Development Administration (EDA) helps our partners across the nation (states, regions, and communities) create wealth and minimize poverty by promoting a favorable business environment to attract private capital investment and jobs through world-class capacity building, planning, infrastructure, research grants, and strategic initiatives.

EDA must collect data and report on the results of the following principal programs. The Public Works program promotes long-range economic development in distressed areas by providing investments for vital public infrastructure and development facilities. The Economic Adjustment programs offer flexible investments for communities facing sudden or severe economic distress including revolving loan funds. EDA's Planning program supports local planning and long-term partnerships with State, regional organizations, Economic Development Districts and Indian Tribes that assist distressed communities with strategic planning and investment activities. The University Center program is a partnership that draws on the expertise of colleges and universities to strengthen the hand of distressed communities as they strive to become economically self-sufficient. The Trade Adjustment Assistance (TAA) program, authorized under the Trade Act of 1974, assists U.S. firms and industries injured as the result of trade agreements by offering low-cost, effective professional assistance to certified firms in developing and implementing recovery strategies.

The Government Performance and Results Act of 1993 requires Federal agencies to develop performance measures, and report to Congress and their stakeholders the results of the agency's performance. To comply with that law, EDA must collect specific data from grant recipients to report on its performance in meeting its stated goals and objectives. The congressionally mandated reports are the Annual Performance Plan and Annual Program Performance Report, annual Accountability Report, and annual

Budgets. Performance measures are designed to evaluate overall program performance and not the performance of individual grantees. The information collected at project completion and various stages thereafter will be used to enhance the management and performance of EDA programs.

Affected Public: State, local or Tribal Government and not-for profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine G. Clayton, Departmental Paperwork Clearance Officer, (202) 482–3129, U.S. Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *mclayton@doc.gov).*

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

Dated: April 25, 2002.

Madeleine Clayton,

Department Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–10625 Filed 4–29–02; 8:45 am]

BILLING CODE 3510–34–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Review

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

SUMMARY: The Department of Commerce (the Department) has received a timely request from Weishan Zhenyu Foodstuff Co., Ltd. (Zhenyu) to conduct a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). In accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, and 19 CFR section 351.214(d) of the Department's regulations, we are initiating this new shipper review.

EFFECTIVE DATE: April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Holly Hawkins, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4236 or (202)482–0414, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR Part 351 (2002).

Background

On March 29, 2002, the Department received a timely request from Zhenyu, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of this antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (''PRC''), which has a September anniversary date.

As required by 19 CFR 351.214(b)(2)(i), (ii), and (iii)(A), Zhenyu, an exporter and producer of crawfish tail meat, has certified that it did not export freshwater crawfish tail meat to the United States during the period of investigation (''POI''), and that it has never been affiliated with any exporter or producer which exported freshwater crawfish tail meat to the United States during the POI. Zhenyu has further certified that its export activities are not controlled by the central government of the PRC, pursuant to the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv)(A), Zhenyu submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the date of entry of that first shipment, the volume of that shipment and the date of the first sale to an unaffiliated customer in the United States. After reviewing submissions with respect to the new shipper review request filed on behalf of Zhenyu, the Department has decided that it will initiate this request in accordance with section 351.214(b) of the Department's regulations. *See Memo from Barbara E. Tillman to the File*, dated April XX, 2002, discussing Zhenyu's request for new shipper review.

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the PRC.

In accordance with 19 CFR 351.214(g)(1)(i)(B) of the Department's regulations, the period of review (POR) for a new shipper review, initiated in the month immediately following the semiannual anniversary month, will be the six-month period immediately preceding the semiannual anniversary month. Therefore, the POR for this new shipper review is:

Antidumping duty proceeding	Period to be reviewed
Fresh Water Crawfish Tail Meat from the PRC:.	
Weishan Zhenyu Foodstuff (Zhenyu) Co., Ltd	09/01/01–02/28/02

We will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Zhenyu. This action is in accordance with 19 CFR 351.214(e).

The interested parties that need access to proprietary information in this new shipper review should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

April 23, 2002

Joseph A. Spetrini,

Deputy Assistant Secretaryfor Import Administration, Group III.

[FR Doc. 02–10610 Filed 4–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Extension of Time Limit for Preliminary Results of New-Shipper Antidumping Review

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

EFFECTIVE DATE: April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Holly Hawkins or Scott Lindsay, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0414 and (202) 482–0780, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations are to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (2001).

Background

On September 20, 2001, the Department of Commerce received a request from Shouzhou Huaxiang Foodstuffs, Co., Ltd. to conduct a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. On September 28, 2001, the Department received a similar request from North Supreme Seafood (Zhejiang) Co., Ltd. On November 8, 2001, the Department found that the requests for review met all of the regulatory requirements set forth in section 351.214(b) of the Department's regulations and initiated these new shipper antidumping reviews covering the period September 1, 2001, through August 31, 2001. See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Review, 66 FR 56536 (November 8, 2001). The preliminary results are currently due no later than April 30, 2002.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B) of the Act, the Department may extend the deadline for completion of the preliminary results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated, and the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days. The Department has issued supplemental questionnaires on the respondents' claims concerning affiliation and date of sale. In addition, we requested information on entry documentation. Given the issues in this case, the Department finds that this case is extraordinarily complicated. Accordingly, the Department is extending the time limit for the completion of the preliminary results by 97 days, to August 5, 2002, in accordance with section 751(a)(2)(B)(iv) of the Act and 351.214(i)(2) of the Department's regulations. The final results will in turn be due 90 days after the date of issuance of the preliminary results, unless extended.

Dated: April 23. 20002

Joseph A. Spetrini,

Deputy Assistant Secretaryfor Import Administration, Group III.

[FR Doc. 02–10611 Filed 4–29–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Proposed Information Collection; Comment Request; NIST Center for Neutron Research (NCNR)

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3504(c)(2)(A)).

DATES: Written comments on the proposed collection of information must be submitted on or before July 1, 2002.

ADDRESSES: Submit written comments on the collection of information to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 1401 Constitution Avenue, NW., Washington, DC 20230, or via the Internet at *MClayton@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Requests of additional information, for copies of the information collection instrument(s) and instructions should be directed to Ron Cappelletti, 100 Bureau Drive, Stop 8562, Gaithersburg, MD 20899–8562, tel. (301) 975–6221, or *ron.cappelletti@nist.gov*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NIST Center for Neutron Research (NCNR) is part of the Materials Science and Engineering Laboratory in Gaithersburg, MD. The NCNR is a national center for research using thermal and cold neutrons, offering advanced measurement capabilities for use by all qualified applicants. Many instruments rely on intense beams of cold neutrons emanating from a recently upgraded liquid hydrogen moderator. The application process collects information which is an integral part of the operation of NCNR as a National User Facility. It is comprised of several stages: a competitive, peer-reviewed proposal process, required by the NCNR charter; required site access procedures for successful applicants; and post-visit customer feedback collection.

II. Method of Collection

Web forms and paper forms as a backup method.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households, business or for-profit.

Estimated Number of Respondents: 400.

Estimated Time Per Response: 2 hours.

Estimated Total Annual Burden Hours: 800 hours.

Estimated Total Annual Cost to the Public: $0.

IV. Request for Comments

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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Dated: April 25, 2002.

Madeleine Clayton,

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

[FR Doc. 02–10624 Filed 4–29–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042502A]

North Pacific Fishery Management Council (NPFMC); Notice of Committee Meeting

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

ACTION: Committee Meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Gulf of Alaska Working Group will meet May 13-14, 2002.

DATES: The meeting will be held on May 13-14, 2002, from 8:30 a.m. to 5 p.m.

ADDRESSES: Federal Building, 709 W. 9th Street, Juneau, Alaska.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, Alaska 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, NPFMC, 907–271–2809.

SUPPLEMENTARY INFORMATION: The workgroup will continue its efforts to develop alternatives for rationalizing the Gulf of Alaska Groundfish Fisheries.

Although nonemergency issues not contained in this agenda may come before the group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: April 24, 2002.

Matteo Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–10599 Filed 4–29–02; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request For Public Comments on Bilateral Textile Consultations With the Government of Belarus

April 26, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA)

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the categories for which consultations have been requested, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On April 24, 2002, under Section 204 of the Agricultural Act of 1956, the Government of the United States requested consultations with the Government of Belarus with respect to women's and girls' wool coats in Category 435 and women's and girls wool slacks, breeches and shorts in Category 448, produced or manufactured in Belarus.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Belarus, the Government of the United States reserves its right to establish a twelve-month limit for the period beginning on April 24, 2002, and extending through April 23, 2003, of not less than 55,021 dozen for Category 435 and not less than 23,595 dozen for Category 448 for the entry and withdrawal from warehouse for consumption of textile products in these categories, produced or manufactured in Belarus.

Anyone wishing to comment or provide data or information on imports from Belarus in Categories 435 and 448 is invited to submit 10 copies of such comments or information to James C. Leonard III, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Becky Geiger. The comments received will be considered in the context of the consultations with the Government of Belarus.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular commentary or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

This solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute ''a foreign affairs function of the United States.''

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Belarus, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 53783, published on October 24, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Statement of Support for the Request for Consultations With Belarus Pursuant to Section 204 of the Agricultural Act of 1956 Regarding Women's and Girls' Wool Coats, Category 435 Imports

Category 435 imports from Belarus are undermining the implementation of the World Trade Organization (WTO) Agreement on Textiles and Clothing (ATC). The introduction of a limit on Category 435 imports from Belarus is necessary and appropriate to carry out the ATC, and is relevant to the enforcement of the ATC. Current imports from Belarus exceed imports from a number of WTO countries, imports that are limited by agreed levels (see Table I). In fact, calendar year 2001 Category 435 imports from Belarus

exceed the agreed levels of 15 countries (see Table II). The orderly flow of trade into the U.S. women's and girls' wool coat market is being disrupted and, if Category 435 imports from Belarus are not limited, the orderly integration process called for by the ATC will be impossible.

U.S. imports of women's and girls' wool coats, Category 435, from Belarus during calendar year 2001 reached 55,021 dozens, over seven times Belarus' 1994 level, and 42 percent above the 38,743 dozens imported during the calendar year 2000. Belarus started shipping women's and girls' wool coats to the U.S. in 1994, shipping only 7,144 dozens. Belarus is now the 9th largest supplier in Category 435 accounting for 3.5 percent of calendar year 2001 world imports.

Total U.S. imports of women's and girls' wool coats, Category 435, reached 1,560,294 dozens in the calendar year 2001 and represent nearly one and a half times the level of U.S. production.

Thailand is a WTO member with whom the United States has negotiated a specific limit. Belarus' calendar year 2001 import level is higher than Thailand's calendar year 2001 import level. Moreover, Belarus' import level for calendar year 2001 exceeds the negotiated specific limits of Uruguay, Indonesia, Korea, Hungary, Taiwan, Bulgaria, China, Slovak Republic, Sri Lanka, Malaysia, Poland, Romania, Singapore, and the Czech Republic, all of which are WTO member countries, and the negotiated specific limit of Macedonia, which is not a WTO member.

The sharp and substantial increase of Category 435 imports from Belarus is disrupting the orderly flow of trade into the U.S. women's and girls' wool coat market. The increasing share of unrestrained women's and girls' wool coat imports from Belarus is creating an inequitable situation in Category 435. Belarus, by shipping in excess of many WTO member countries that have negotiated quota agreements with the United States under the ATC, is disrupting the orderly flow of trade and creating an inequitable situation.

After undertaking a comparative assessment of Belarus' Category 435 imports and imports from other sources, the United States has determined that a request for consultations is necessary to correct the inequity between controlled and uncontrolled suppliers in the flow of trade into the U.S. women's and girls' wool coat market and to implement and maintain the integrity of the ATC.

TABLE I.—U.S. IMPORT LEVELS FROM BELARUS AND WTO COUNTRIES WITH SPECIFIC LIMITS WHOSE CURRENT IMPORT LEVELS ARE BELOW BELARUS WOMEN'S AND GIRLS' WOOL COATS—CATEGORY 435

[1,000 Dozens]

Country	Imports Calendar Year 2001	Percent of Total	Country Rank
World	1,560	100	
Belarus	55	3.5	9
WTO Countries:			
Thailand	54	3.4	10
Korea	38	2.5	14
Taiwan	28	1.8	16
Romania	17	1.1	24
Malaysia	15	0.9	25
Sri Lanka	14	0.9	26
Poland	9	0.6	31
Hungary	8	0.5	33
Slovakia	8	0.5	34
Uruguay	2	0.2	46

TABLE II.—2001 SPECIFIC LIMITS (SL) BELOW BELARUS' CALENDAR YEAR 2001 IMPORTS WOMEN'S AND GIRLS' WOOL COATS—CATEGORY 435

[1,000 Dozens]

Belarus	55.0
WTO Countries SL's:	
Uruguay	54.8
Indonesia	49
Korea	37
Hungary	27
Taiwan	26
Bulgaria	25
China	25
Slovak Rep.	18
Sri Lanka	16
Malaysia	16
Poland	14
Romania	10
Singapore	7
Czech. Rep.	4
Non-WTO Countries SL's:	
Macedonia	30

Statement of Support for the Request for Consultations With Belarus Pursuant to Section 204 of the Agricultural Act of 1956 Regarding Women's and Girls' Wool Slacks, Breeches and Shorts Category 448 Imports

Category 448 imports from Belarus are undermining the implementation of the World Trade Organization (WTO) Agreement on Textiles and Clothing (ATC), and the introduction of a limit on Category 448 imports from Belarus is necessary and appropriate to carry out the ATC, and is relevant to the enforcement of the ATC. Current imports from Belarus exceed imports from a number of WTO countries, imports that are limited by agreed levels (see Table I). In fact, calendar year Category 448 imports from Belarus exceed the agreed levels of four countries (see Table II). The orderly flow of trade into the U.S. women's and girls' wool slacks, breeches and shorts market is being disrupted and, if Category 448 imports from Belarus are not limited, the orderly integration process called for by the ATC will be impossible.

U.S. imports of women's and girls' wool slacks, breeches and shorts, Category 448, from Belarus during calendar year 2001 reached 23,595 dozens, over thirteen times Belarus' 1995 level, and 29 percent above the 18,328 dozens imported during the calendar year 2000. Belarus started shipping women's and girls' wool slacks, breeches and shorts to the U.S. in 1995, shipping only 1,791 dozens. Belarus is now the 14th largest supplier in Category 448 accounting for 2.3 percent of calendar year 2001 world imports.

Total U.S. imports of women's and girls' wool slacks, breeches and shorts, Category 448, reached 1,019,208 dozens in the calendar year 2001 and represent nearly two and one half times the level of U.S. production.

Romania and Hungary are WTO members with whom the United States has negotiated specific limits. Belarus' calendar year 2001 import level is higher than the calendar year 2001 import levels of Romania and Hungary. Moreover, Belarus' import level for calendar year 2001 exceeds the negotiated specific limits of China, Indonesia, Taiwan, Egypt, and the unilateral restraint of Burma, all of which are WTO member countries.

The sharp and substantial increase of Category 448 imports from Belarus is disrupting the orderly flow of trade into the U.S. women's and girls' wool slacks, breeches and shorts market. The increasing share of unrestrained women's and girls' wool slacks, breeches and shorts imports from Belarus is creating an inequitable situation in Category 448. Belarus, by shipping in excess of many WTO member countries that have negotiated quota agreements with the United States under the ATC, is disrupting the orderly flow of trade and creating an inequitable situation.

After undertaking a comparative assessment of Belarus' Category 448 imports and imports from other sources, the United States has determined that a request for consultations is necessary to correct the inequity between controlled and uncontrolled suppliers in the flow

of trade into the U.S. women's and girls' wool slacks, breeches and shorts market and to implement and maintain the integrity of the ATC.

TABLE I.—U.S. IMPORT LEVELS FROM BELARUS AND WTO COUNTRIES WITH SPECIFIC LIMITS WHOSE CURRENT IMPORT LEVELS ARE BELOW BELARUS WOMEN'S AND GIRLS' WOOL SLACKS, BREECHES AND SHORTS—CATEGORY 448

[1,000 Dozens]

Country	Imports Calendar Year 2001	Percent of Total	Country Rank
World	1,019	100	
Belarus	24	2.3	14
WTO Countries:			
Indonesia	23	2.3	15
Romania	22	2.1	16
Taiwan	19	1.8	20
Hungary	12	1.2	24

TABLE II.—2001 SPECIFIC LIMITS (SL) BELOW BELARUS' CALENDAR YEAR 2001 IMPORTS WOMEN'S AND GIRLS' WOOL SLACKS, BREECHES AND SHORTS—CATEGORY 448

[1,000 Dozens]

Belarus	23.6
WTO Countries SL's:	
China	22.5
Indonesia	21.9
Taiwan[1]	21.2
Egypt	20.1
Burma[2]	2.5

[1] SL Categories 447 and 448.
[2] Unilateral Restraint Level.

[FR Doc. 02–10756 Filed 4–26–02; 2:33 pm]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Performance Standards for Auxiliary Hazard Lighting Systems for Snowmobiles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition (CP 02–2) requesting that the Commission issue performance standards for auxiliary hazard lighting systems for snowmobiles. The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary must receive comments on the petition by July 1, 2002.

ADDRESSES: Comments on the petition, preferably in five copies, should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov*. Comments should be captioned ''Petition CP 02–2, Petition for Performance Standards for Auxiliary Hazard Lighting Systems for Snowmobiles.'' A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland. The petition is also available on the CPSC website at *www.cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from Snow Glow® Inc. requesting that the Commission issue a rule prescribing performance standards for auxiliary hazard lighting systems on snowmobiles. The petitioner asserts that snowmobiles without such auxiliary hazard lighting systems pose an increased risk of collision between snowmobiles and serious injury or death to the operator of either snowmobile involved.

The petitioner maintains that auxiliary hazard lighting systems to reduce or eliminate this risk must exhibit the following characteristics: (1) Have an energy power source separate from the main power source of the snowmobile; (2) operate for a minimum of 40 hours at 0 degrees Fahrenheit and function in temperatures of minus 30 degrees Fahrenheit or colder; (3) have an on-off switch that is separate from the main electrical system; (4) emit yellow light from the front of the snowmobile and red from the rear; and (5) have a flashing display visible in unobstructed darkness from at least one half mile distance, from the front and rear of the snowmobile

The Commission is docketing the correspondence as a petition under provisions of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051–2084.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. The petition is available on the CPSC website at *www.cpsc.gov*. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: April 25, 2002.

Todd A. Stevenson, Secretary,

Consumer Product Safety Commission.

[FR Doc. 02–10635 Filed 4–29–02; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Draft Information Quality Guidelines: Notice of Availability

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission is announcing the availability of a draft of its Guidelines for Ensuring the Quality, Objectivity, Utility, and Integrity of Information disseminated by the Commission.

DATES: Comments must be received by July 1, 2002.

ADDRESSES: Written comments should be captioned ''Information Quality Guidelines'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov*, or by the Web site comment submission form at *http://www.cpsc.gov/feedback.html*.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, 301–504–0980, e-mail *jrosenthal@cpsc.gov*.

SUPPLEMENTARY INFORMATION: These draft guidelines and supporting documents are available on the Internet at *http://www.cpsc.gov/library/infoguides.pdf* and are issued pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001, Public Law 106–554, which mandated that the Office of Management and Budget (OMB) issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical

information) disseminated by Federal agencies.'' The statute further requires OMB to require each Federal agency to issue its own guidelines. OMB's amended final guidance appears at 67 FR 8452, February 22, 2002, and at *http://www.whitehouse.gov/omb/fedreg/final_information_quality.htm*. The OMB guidelines, as further revised at 67 FR 9797, March 4, 2002, require each Federal agency to post its own draft guidelines on the Internet by May 1, 2002. Based on comments from the public and OMB, final agency guidelines will be issued by October 1, 2002. Thereafter, starting on January 1, 2004, agencies must file annual fiscal year reports to OMB on the number, nature and resolution of complaints about alleged noncompliance with the agency guidelines.

A paper copy of the guidelines may also be obtained by telephoning Mary Kelsey at 301–504–0000.

Dated: April 25, 2002.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–10636 Filed 4–29–02; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–C0004]

Peg Perego U.S.A., Inc., a Corporation Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 11180.(e). Published below is a provisionally-accepted Settlement Agreement with Peg Perego U.S.A., Inc., a corporation containing a civil penalty of $150,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 15, 2002.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 02–C0004 Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Belinda V. Mitchell, Trial Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: April 25, 2002.

Todd A. Stevenson,

Secretary.

In the Matter of Peg Perego U.S.A., Inc. a Corporation; Settlement Agreement and Order

1. This Settlement Agreement, made by and between the staff (''the staff'') of the U.S. Consumer Product Safety Commission (the ''Commission'') and Peg Perego U.S.A., Inc., (''Peg Perego'' or ''Respondent''), a corporation, in accordance with 16 CFR 1118.20 of the Commission's procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''), is a settlement of the staff allegations set forth below.

The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051–2084.

3. Peg Perego is a corporation organized and existing under the laws of the State of Indiana with its principal corporation offices located in Fort Wayne, Indiana.

Staff Allegations

4. Between 1990 and 1998, Peg Perego manufactured and sold nationwide approximately 274,000 battery-powered 12-volt ride-on vehicles (the ''vehicle(s)'' or the ''product(s)''). These vehicles are intended for use by children three to eight years old.

5. The vehicles are ''consumer products'' and Respondent is a ''manufacturer'' of ''consumer products'', which were ''distributed in commerce'' as those terms are defined in sections 3(a)(1), (4), (11) and (12) of the CPSA, 15 U.S.C. 2052(a)(1), (4), (11), and (12).

6. The vehicles are defective because their electrical components can overheat and cause fires. If this should occur, children and others could suffer serious injuries or die. Additionally, the foot pedals can get stuck in the ''on'' position, preventing the vehicles from stopping and thereby creating the potential for collisions that could cause serious injury or death.

7. Between April 1994 and March 1997, Peg Perego received approximately 197 reports of the vehicles' electrical components overheating, causing smoking, melting or fire. These incidents resulted in two burn injuries, one involving a 2nd degree burn injury to a child, and approximately $55,000 in property damage to three houses and garages. Despite being aware of this information, Peg Perego did not voluntarily provide it to the Commission.

8. Not until March 17, 1997, after receiving a letter from the staff requesting information about battery operated vehicle fire incidents, did Peg Perego provide the staff with information about the vehicles' overheating defect.

9. In April 1998, Peg Perego submitted an initial report to the Commission reporting the foot pedal sticking problem. By this time, Respondent was aware of approximately 20 incidents involving the products' failure to stop, resulting in one concussion and six minor injuries when the vehicles hit a tree, car, truck, pole, or fence.

10. Although Peg Perego had obtained sufficient information to reasonably support the conclusion that these vehicles contained defects which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, it failed to report such information to the Commission as required by section 15(b) of the CPSA. By failing to report, Peg Perego violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

11. Respondent committed this failure to report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), and Respondent is subject to civil penalties under section 20 of the CPSA.

Response of Peg Perego

12. Peg Perego denies the allegations of the staff that the vehicles contain a defect which could create a substantial product hazard pursuant to section 15(a) of the CPSA, 15 U.S.C. 2064(a), and denies that it violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b).

13. Respondent denies that the information available to it reasonably supported the conclusion that the vehicles contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, and, therefore, no report was required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

14. Notwithstanding its denial that the vehicles contain a defect which could create a substantial product hazard, and notwithstanding its denial that the vehicles create an unreasonable risk of serious injury or death, Respondent nevertheless, cooperated with the staff in recalling the products.

15. Respondent agrees to this Settlement Agreement and Order solely to avoid incurring additional legal costs and it does not constitute, nor is it evidence of, an admission of any fault, any liability, any violation of any law, or any wrongdoing by Respondent.

16. Respondent enters into this Agreement solely to settle the allegations of the staff that a civil penalty is appropriate.

Agreement of the Parties

17. The Commission has jurisdiction over this matter and over Peg Perego under the CPSA, 15 U.S.C. 2051–2084.

18. Peg Perego agrees to pay to the order of the U.S. Treasury a civil penalty in the amount of one hundred fifty thousand dollars ($150,000.00), in settlement of this matter, payable within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement.

19. This Settlement Agreement and Order is entered into for settlement purposes only and does not constitute findings by the

Commission or an admission of any fault, any liability, any violation of any law, or any wrongdoing by Respondent.

20. Peg Perego knowingly, voluntarily and completely waives any rights it may have in the above captioned case (i) to the issuance of a Complaint in this matter; (ii) to an administrative or judicial hearing with respect to the staff's allegations cited herein; (iii) to judicial review or other challenge or contest of the validity of the Settlement Agreement or the Commission's Order; (iv) to a determination by the Commission as to whether a violation of Section 15(b) of the CPSA, has occurred, (v) to a statement of findings of fact and conclusions of law with regard to the staff's allegations; and (vi) to any claims under the Equal Access to Justice Act.

21. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, the Commission shall place this Agreement and Order on the public record and shall publish it in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register,** in accordance with 16 CFR 1118.20(f).

22. This Settlement Agreement and Order becomes effective after its final acceptance by the Commission and service upon Respondent.

23. Upon final acceptance of this Settlement Agreement by the Commission, the Commission may publicize the terms of the Settlement Agreement and Order.

24. Respondent agrees to the entry of the attached Order, which is incorporated by reference, and agrees to be bound by its terms.

25. This Settlement Agreement and Order is binding upon Peg Perego, its parent and each of their assigns and successors.

26. Final acceptance of this Settlement Agreement by the Commission, the issuance of this Order, and the full and timely payment by Peg Perego to the United States Treasury of a civil penalty in the amount of one hundred fifty thousand dollars ($150,000.00), fully and completely resolves the issue of liability to the Commission under section 20 of the CPSA for a civil penalty arising from the allegations in paragraphs 4 through 11 above.

27. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Peg Perego determine that severing the provision materially impacts the purpose of the Settlement Agreement and Order.

28. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced, and approved by the Commission.

29. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representation, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or to contradict its terms.

Dated: April 4, 2002.

Peg Perego, USA, Inc.

Kellen W. Watkins,
Vice President.

The Consumer Product Safety Commission

Alan H. Schoem,
Director, Office of Compliance.

Eric L. Stone,
Director, Legal Division, Office of Compliance,

April 8, 2002.

Belinda V. Mitchell,
Trial Attorney,
Ronald G. Yelenik,
Trial Attorney, Legal Division, Office of Compliance.

Peg Perego U.S.A., Inc., a Corporation; Order

Upon consideration of the Settlement Agreement between Respondent Peg Perego U.S.A., Inc., a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Peg Perego U.S.A., Inc., and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted, and it is

Further Ordered, that Peg Perrego U.S.A., Inc. shall pay to the order of the U.S. Treasury a civil penalty in the amount of one hundred fifty thousand dollars ($150,000.00), payable within twenty (20) calendar days after service of this Final Order upon Peg Perego U.S.A., Inc.

Provisionally accepted and Provisional Order issued on the 25th day of April, 2002.

By Order of the Commission.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 02–10637 Filed 4–29–02; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–23]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604—6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–23 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 24, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

16 APR 2002
In reply refer to:
I-02/004246

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-23 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Kuwait for defense articles and service estimated to cost $2.1 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale are described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Acting Director

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Kuwait**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ .6 billion
Other	$1.5 billion
TOTAL	$2.1 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 16 AH-64D Apache attack helicopters, four (4) spare T-700-GE -701C engines with gas generator first state 401C turbine blades, four (4) spare M299 HELLFIRE launchers, 96 Longbow HELLFIRE AGM-114L3 and 288 HELLFIRE AGM-114K3 missiles, 16 dummy missiles, 16 Modernized Targeting Acquisition and Designation Systems, eight (8) AN/APG-78 Longbow Fire Control Radar, 30mm cartridges, 2.75-inch rockets, ammunition, spare and repair parts, communications equipment, support equipment, simulators, quality assurance teams, chemical masks, tools and test sets, chaff dispensers, Integrated Helmet and Display Sight Systems, electronic equipment, test facility spares, publications, Quality Assurance Teams, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support**

(iv) **Military Department: Army (UKS and OCX)**

(v) **Prior Related Cases, if any: None**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress: 17 APR 2002**

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Kuwait – AH-64D Apache Helicopters

The Government of Kuwait has requested a possible sale of 16 AH-64D Apache attack helicopters, four (4) spare T-700-GE -701C engines with gas generator first state 401C turbine blades, four (4) spare M299 HELLFIRE launchers, 96 Longbow HELLFIRE AGM-114L3 and 288 HELLFIRE AGM-114K3 missiles, 16 dummy missiles, 16 Modernized Targeting Acquisition and Designation Systems, eight (8) AN/APG-78 Longbow Fire Control Radar, 30mm cartridges, 2.75-inch rockets, ammunition, spare and repair parts, communications equipment, support equipment, simulators, quality assurance teams, chemical masks, tools and test sets, chaff dispensers, Integrated Helmet and Display Sight Systems, electronic equipment, test facility spares, publications, Quality Assurance Teams, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $2.1 billion.

This proposed sale will help to enhance the foreign policy and national security objectives of the United States by providing Kuwait a creditable defensive anti-armor augmentation.

Regional foreign policy and military developments affecting this sale have been carefully considered and the positive features of having a friendly coalition force in the region are a driving force. This proposed sale would not destabilize the Middle Eastern region balance of power.

Kuwait desires these articles to fulfill its strategic commitments for self-defense and self-reliance and coalition force compatibility. The proposed sale will upgrade the Kuwaiti anti-armor day/night missile capability, provide for the defense of vital installations and provide close air support for the military ground forces. Kuwait will have no difficulty absorbing these helicopters into its armed forces.

The principal contractors will be Boeing Company in Mesa, Arizona; Lockheed Martin Electronics and Missiles in Orlando, Florida; Lockheed Martin Systems Integration in Owego, New York; General Electric in Lynn, Massachusetts; and Longbow International in Orlando, Florida. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this sale will require the assignment of several U.S. Government Quality Assurance Teams to Kuwait for one month to assist in the delivery and deployment of the helicopters. There will be U.S. Government representatives for two-week intervals twice annually to participate in program management and technical reviews. Up to 40 contractor representatives will serve as technical representative, for approximately two years following initial deployment. One each U.S. Government and contractor representatives representing varying technical skills and disciplines, will be required to provide in-country support for an extended period of time.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-23

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AH-64D Apache Attack Helicopter includes the following sensitive and/or classified (up to and including Secret) components:

a. AN/APG-78 Longbow Fire Control Radar (FCR) is an active fire control radar system providing detection, location, classification and prioritization of targets to be prosecuted by the Longbow HELLFIRE Modular Missile System or handed over to other on-board sensor systems. This enables the Apache helicopter to detect and fire upon targets in visual conditions that preclude the use of visual or infrared imaging systems. Hardware and releasable technical manuals for operation and organic level maintenance are unclassified. The data, including operational software, proposed for release will not, in itself, facilitate reverse engineering.

b. AN/APR-48A Radar Frequency Interferometer (RFI) is part of the AN/APG-78 FCR. It passively detects, locates in azimuth, and identifies radar emitters and sends the emitter identification and location to either the FCR or to the Apache Weapons Processor for display to the aircrew. Emitter information can also be used to cue the FCR, as well as for making decisions on FCR target prioritization. Hardware is classified Confidential when the User Data Module (UDM) is attached to the RFI Processor Assembly, Unclassified when the UDM is absent. Releasable technical manuals for operation and organic level maintenance are Unclassified. The data, including operational software, proposed for release will not facilitate reverse engineering.

c. The Modernized Target Acquisition and Designation Sight/Pilot Night Vision Sensor (TADS/PNVS) provides day, night, limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

d. The AGM-114L3 HELLFIRE Longbow weapon system hardware and the documentation provided are unclassified. However, sensitive technology is contained within the system itself. Sensitive software algorithms are contained within the system, but the L3 version contains several software security capabilities. Also, the missile source code is not releasable. This protects the sensitive software information from being compromised. The Longbow seeker contains critical components, but the technical data package will not be released.

e. The AGM-114K3 HELLFIRE air-to-surface laser weapon system is a helicopter launched, airborne anti-armor weapon with a terminal homing seeker and a shaped charge warhead, which homes in on a laser spot that can be projected from ground observers, other aircraft, or the launching aircraft. This enables the aircraft to launch its missile indirectly, in some situations, without seeing its target. Missiles will utilize the semi-active laser terminal homing guidance system. Hardware is unclassified. The data proposed for release will not facilitate reverse engineering.

f. The Common Missile Warning System (CMWS) detects energy emitted by threat missile in-flight, evaluates potential false alarm emitters in the environment, declares validity of threat and selects appropriate counter-measures. The CMWS consists of an Electronic Control Unit (ECU) and four to six Electro-Optic Missile Sensors (EOMSs). The ECU provides the central processing and integrates the sub-components of the CMWS and processes information obtained from the EOMSs. The ECU hardware is unclassified, software is Secret. The EOMSs are passive starring detectors operating in the UV electromagnetic spectrum. They detect UV radiation generated from the plume of an in-flight missile and transmit the information to the EUC. The EUC hardware is unclassified and the software is unclassified.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Kuwait can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–10520 Filed 4–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Draft Deputy Secretary of Defense Policy Memorandum, Subject: Ensuring the Quality of Information Disseminated by the Department of Defense

AGENCY: Assistant Secretary of Defense for Command, Control, and Communications, DoD.

ACTION: Notice of availability.

SUMMARY: The Office of Management and Budget (OMB) has provided all government agencies guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information disseminated to the public. OMB has directed the agencies to publish a notice in the **Federal Register**, by May 1, 2002, that their draft policies complying with the OMB requirement is available for public view and comment on their public web sites. The draft Department of Defense Memorandum provides policy and procedural guidance for DoD Components in accordance with OMB directions. It also assigns responsibilities, establishes administrative mechanisms that allow affected persons to seek and obtain correction of information maintained and disseminated by DoD Components which may not meet the quality standards and delineates reporting requirements. The draft Policy Memorandum is available on the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ADS(C3I)) public web site located at *http://www.c3i.osd.mil/org/cio/index.html.*

DATES: Consideration will be given to all comments received on or before May 30, 2002.

ADDRESSES: Submit comments to Ellen Law, OADS(C3I), Office of the Assistant Secretary of Defense for Command, Control, Communications and Intelligence/Chief Information Officer, 6000 Defense Pengaton, Washington, DC 20301–6000.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Law, OADS(C3I), 703–602–0980 Ext. 121, *Ellen.law@osd.mil.*

Dated: April 24, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–10519 Filed 4–29–02; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. The U.S. Patent Application Serial No. was filed March 29, 2002, entitled ''Efficient Near-Neighbor Search (ENN–SEARCH) Method for High Dimensional Data Sets with Noise'', Navy Case No. 82,296.

ADDRESSES: Requests for copies of the patent cited should be directed to the

Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: cotell@nrl.navy.mil or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: April 24, 2002.

T. J. Welsh,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–10551 Filed 4–29–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

[Dockets No. EA–261 and EA–263]

Applications to Export Electric Energy; UBS AG, London Branch

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Under separate applications, UBS AG, London Branch (UBS) has applied for authority to transmit electric energy from the United States to Mexico and from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: In Docket EA–261, comments, protests or requests to intervene must be submitted on or before May 15, 2002. In Docket EA–263, comments, protests or requests to intervene must be submitted on or before May 30, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On April 11, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received separate applications from UBS for authorization to transmit electric energy from the United States to Mexico and to Canada. UBS, a Swiss corporation formed in 1998 by the merger of Union Bank of Switzerland and Swiss Bank Corporation, is a power marketer that does not own or control any electric generation or transmission facilities nor does it have any franchised service territory in the United States. The designation ''London Branch'' indicates the principal booking location of the company's energy trading business; UBS AG London Branch and UBS AG are legally the same entity.

In FE Docket No. EA–261, UBS proposes to export electric energy to Mexico and to arrange for the delivery of those exports to Mexico over the international transmission facilities owned by San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company, and Comision Federal de Electricidad, the national electric utility of Mexico. UBS seeks expeditious approval of this application in order to participate in a solicitation for electric power by CFE during the summer of 2002. In FE Docket No. EA–263, UBS proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company.

The construction of each of the international transmission facilities to be utilized by UBS, as more fully described in the applications, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the UBS applications to export electric energy to Mexico and/or Canada should be clearly marked with Docket EA–261 and/or Docket EA–263, respectively. Additional copies are to be filed directly with Sarah G. Novosel, Bracewell & Patterson, L.L.P., 2000 K Street, NW., Suite 500, Washington, DC 20006–1872 and Robert Frank, Director, Regulatory Affairs, UBS Warburg Energy, LLC, 1500 Louisiana Street, Houston, TX 77010.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on April 24, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–10571 Filed 4–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Certification Notice—207]

Office of Fossil Energy; Notice of Filings of Coal Capability Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy.

ACTION: Notice of filings.

SUMMARY: The owners/operators of 7 baseload electric powerplants have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended, in accordance with 10 CFR 501.60, 61.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Import/Export, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42

U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy (DOE). The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload electric powerplants have filed self-certifications pursuant to section 201(d) and in accordance with DOE regulations in 10 C.F.R. 501.60, 61.

Owner/operator	Capacity	Plant location	In-service date
Migrant Zeeland, LLC	550 MW	Zeeland, MI	July 1, 2002.
Duke Energy Fayette, LLC	620 MW	Masontown, PA	June 1, 2003.
Hermiston Power Partnership	617 MW	Hermiston, Oregon	June 2002.
Duke Energy Washington, LLC	620 MW	Beverly, Ohio	June 1, 2002.
Meriden Gas Turbines, LLC	544 MW	Meriden, CT	August 1, 2003.
Migrant Sugar Creek Ven, Inc.	559 MW	West Terre Haute, IN	June 1, 2003.
MidAmerican Energy Co.	540 MW	Pleasant Hill, Iowa	Phase I Summer 2003/Phase II Summer 2003.

Issued in Washington, DC, on April 24, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–10572 Filed 4–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: April 22, 2002, 67 FR 19568.

Previously Announced Time and Date of Meeting: April 24, 2002

10:00 a.m.

Change in the Meeting: The following Docket Nos. and Item No. has been added to the Commission meeting agenda of April 24, 2002.

Item No.,	Docket No., and Company
E–4	EC99–101–006, Northern States Power Company (Minnesota) and New Century Energies, Inc.
H–4	AD02–16–000, Report on Delegated Actions.

Magalie R. Salas,

Secretary.

[FR Doc. 02–10656 Filed 4–25–02; 4:22 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7203–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; State Program Adequacy Determination—Municipal Solid Waste Landfills (MSWLFs) and Non-municipal, Non-hazardous Waste Disposal Units That Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: State Program Adequacy Determination—Municipal Solid Waste Landfills (MSWLFs) and Non-municipal, Non-hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste, ICR Number 1608.03, OMB control number 2050–0152, expiring on April 30, 2002. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 30, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 1608.03 and OMB Control No. 2050–0152, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *Auby.Susan@epamail.epa.gov,* or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1608.03. For technical questions about the ICR contact Steven Levy by phone at (703) 308–7267.

SUPPLEMENTARY INFORMATION:

Title: State Program Adequacy Determination—Municipal Solid Waste Landfills (MSWLFs) and Non-municipal, Non-hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste, OMB Control No. 2050–0152; EPA ICR No. 1608.03, expiring April 30, 2002. This is a request for extension of a currently approved collection.

Abstract: Section 4010(c) of the Resource Conservation and Recovery Act (RCRA) of 1976 requires that EPA revise the landfill criteria promulgated under paragraph (1) of section 4004(a) and section 1008(a)(3). Section 4005(c) of RCRA, as amended by the Hazardous Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that MSWLFs and non-municipal, non-hazardous waste disposal units that receive household hazardous waste or CESQG hazardous waste are in compliance with the revised criteria for

the design and operation of non-municipal, non-hazardous waste disposal units under 40 CFR part 257, subpart B and MSWLFs under 40 CFR part 258. (40 CFR part 257, subpart B and 40 CFR part 258 are henceforth referred to as the ''revised federal criteria''.) Section 4005(c) of RCRA further mandates the EPA Administrator to determine the adequacy of state permit programs to ensure owner and/or operator compliance with the revised federal criteria. A state program that is deemed adequate to ensure compliance may afford flexibility to owners or operators in the approaches they use to meet federal requirements, significantly reducing the burden associated with compliance.

In response to the statutory requirement in section 4005(c), EPA developed 40 CFR part 239, commonly referred to as the State Implementation Rule (SIR). The SIR describes the state application and EPA review procedures and defines the elements of an adequate state permit program.

The purpose of the ICR is to allow EPA to continue its evaluation of state permit program applications to determine whether they satisfy the statutory test reflected in the requirements of 40 CFR part 239. In all cases, the information will be analyzed to determine the adequacy of the states permit program for ensuring compliance with the federal revised criteria. The analysis will also assist EPA in complying with the Government Performance and Results Act (GPRA) of 1993. 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 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 11, 2001 (66 FR 51949); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 177 hours per response. 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.

Respondents/Affected Entities: States that seek approval of new or modified permit programs for MSWLFs and for non-municipal, non-hazardous waste disposal units that receive CESQG waste.

Estimated Number of Respondents: 18.

Frequency of Response: One-time only.

Estimated Total Annual Hour Burden: 3,189 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments 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 to the addresses listed above. Please refer to EPA ICR No. 1608.03 and OMB Control No. 2050–0152 in any correspondence.

Dated: April 15, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–10629 Filed 4–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0056; FRL–7176–6]

Request for Public Comment on Proposed Consent Decree Involving Pesticides and the Endangered Species Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is making available for comment a proposed consent decree that would establish a series of deadlines for the Agency to begin consulting with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) relative to certain pesticide uses and their potential effects on certain plant and fish species listed as threatened or endangered. EPA will evaluate all comments received during the public comment period to determine whether all or part of the proposed consent decree warrants reconsideration. This proposed consent decree, if entered by the Court, would resolve a lawsuit brought against EPA under the Endangered Species Act (ESA), by Californians for Alternatives to Toxics (CATs), the Environmental Protection Information Center, Inc., and the Humboldt Watershed Council (jointly, Plaintiffs).

DATES: Comments, identified by docket ID number OPP–2002–0056, must be received on or before May 29, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0056 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Arty Williams, Field and External Affairs Division, (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5239; fax number: (703) 308–3259; e-mail address: *williams.arty@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select ''Laws and Regulations,'' ''Regulations and Proposed Rules,'' and then look up the entry for this document under the ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

The proposed consent decree and other relevant documents are available electronically on EPA's web site http://www.epa.gov/pesticides under both

headings, ''What's New?'' and ''Open Comment Periods.''

2. *In person.* The Agency has established an official record for this action under docket ID number OPP–2002–0056. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2002–0056 in the subject line on the first page of your response. The submission of a comment is construed as a waiver of any CBI claim as to that comment. (See Unit I.D.)

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *opp-docket@epa.gov*, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket ID number OPP–2002–0056. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Should EPA determine as a result of any comments received during this public comment period that all or part of the proposed consent decree merits reconsideration, EPA will provide the Plaintiffs with a written request for further negotiations and a copy of all comments related to EPA's basis for such negotiations. Therefore, EPA will construe the submission of a comment as a waiver of any CBI claim as to that comment. If you have any questions about CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

a. On August 31, 2000, Plaintiffs filed a lawsuit in U.S. District Court for the Northern District of California alleging that EPA failed to comply with ESA sections 7(a)(1) and 7(a)(2), 16 U.S.C. 1536(a)(1)–(2), and with the Fish and Wildlife Act, 16 U.S.C. 742d-1. *CATs* v. *EPA*, Case No. C00-3150 CW (N.D. Calif.). The Plaintiffs filed an amended complaint on November 13, 2000.

b. In March of 2001, the parties participated in a court-ordered mediation. For several months following the mediation, the parties engaged in extensive discussions in hopes of settling this litigation.

c. On April 19, 2002, EPA reached an agreement with the Plaintiffs. The agreement is embodied in a proposed consent decree. The proposed Consent Decree sets a series of deadlines for initiating a number of consultations with the FWS and the NMFS relative to certain pesticide uses and their potential effects on certain plants and fish, including:

1. Consultation on the effects of certain forest operation uses of registered pesticide products containing the active ingredients atrazine, imazapyr, glyphosate, hexazinone, sulfometuron-methyl, triclopyr butoxyethyl ester, triclopyr triethylammonium, and 2,4-D-2 ethylhexyl ester on 33 listed plants associated with forests in California;
2. Consultation on the effects of certain forest operation uses of registered pesticide products containing the active ingredients imazapyr, sulfometuron-methyl, and triclopyr triethylammonium on six species of listed salmon and steelhead and their designated critical habitat (hereinafter collectively referred to as ''salmonids'');
3. Consultation on the effects of certain pesticide uses of registered pesticide products containing the active ingredients acrolein, carbaryl, chlorpyrifos, and diazinon on salmonids;
4. Consultation on the effects of certain pesticide uses of registered pesticide products containing the active ingredients atrazine, bromacil, diuron, and simazine on salmonids;
5. Consultation on the effects of certain pesticide uses of registered pesticide products containing the active ingredients 2,4-D-2 ethylhexyl ester, molinate, oryzalin, and triclopyr butoxyethyl ester on salmonids; and
6. Consultation on the effects of certain pesticide uses of registered pesticide products containing the active ingredients glyphosate, hexazinone, and oxyfluorfen on salmonids.

d. In addition, the proposed consent decree provides that EPA will evaluate, during its ongoing ESA section 7(a)(1) Proactive Conservation Review with FWS and NMFS, how to consider the following topics:

1. Chronic and sublethal effects of pesticides on all life stages of endangered and threatened species;
2. Effects of complete pesticide product formulations, effects of diluents, and adjuvants, and effects of the products of pesticide degradation;
3. How direct and indirect effects of pesticides added to the environmental baseline impact endangered and threatened species;

4. The use of systematic field monitoring in a variety of site conditions, runoff patterns, and application methods to validate transport and persistence models; and

5. Best available scientific evidence.

e. The proposed consent decree also provides that the Plaintiffs may develop a position paper on any or all of the five topics identified in Unit II.d. EPA is offering this same opportunity to the public. EPA will consider any position papers it receives from the Plaintiffs and/or the public within 90 days from the date that a final consent decree is entered by the Court.

f. Beginning on April 29, 2002, EPA opened a 30-day comment period on the proposed consent decree. EPA will use the comments to determine whether all or part of the proposed consent decree warrants reconsideration. If EPA determines that any part of the proposed consent decree warrants reconsideration, EPA will provide the Plaintiffs with a written request for further negotiations and with copies of all comments received in response to this notice. The proposed consent decree shall not be entered with the Court unless the parties can reach agreement on needed changes. If EPA determines that the proposed consent decree does not need to be reconsidered, the terms of the proposed consent decree shall become effective upon entry by the U.S. District Court for the Northern District of California. Once the Consent Decree is entered by the U.S. District Court for the Northern District of California, EPA will publish another **Federal Register** notice notifying the public of the opportunity to submit position papers on the five topics described in Unit II.d.

List of Subjects

Environmental protection, Endangered species, Pesticides and pests.

Dated: April 25, 2002.

Jay Ellenberger,

Acting Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 02–10725 Filed 4–29–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OEI–10014; FRL–6723–7]

Draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency

AGENCY: Environmental Protection Agency, EPA.

ACTION: Notice of availability; comment request; meeting announcement.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is currently developing *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (herein after referred to as ''Information Quality Guidelines''), in response to an Office of Management and Budget (OMB) guideline directing all federal agencies to develop and implement their own guidelines by October 1, 2002 (67 FR 8451, February 22, 2002). EPA's ''Information Quality Guidelines'' will build upon on-going efforts to improve the quality of the data and analyses that support Agency policy and regulatory decisions and programs. EPA is announcing the availability of the Agency's draft ''Information Quality Guidelines'' and is requesting comment on them. The draft ''Information Quality Guidelines'' are available at EPA's Web site, *www.epa.gov/oei/qualityguidelines.* In addition, EPA is announcing a public meeting in Washington, DC to discuss EPA draft ''Information Quality Guidelines''.

DATES: Comments must be received on or before May 31, 2002, 11:59 pm EST. The public meeting will be held on May 15, 2002.

ADDRESSES: Comments should be addressed to: Docket ID No. OEI–10014 which has been established at: U.S. EPA, Northeast Mall, Room B607, 401 M Street SW., Washington, DC, 20460. Comments may be submitted by web site, e-mail, mail, facsimile, or in person. The public meeting will be held in Washington, DC. See the ''Supplementary Information'' section for instructions on submitting comments and public meeting information.

FOR FURTHER INFORMATION CONTACT: Ms. Evangeline Tsibris Cummings, Environmental Protection Agency, Office of Environmental Information, Mail Code 2842T, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Telephone: 202–566–0621; e-mail: *cummings.evangeline@epa.gov.*

SUPPLEMENTARY INFORMATION:

What Are EPA's ''Information Quality Guidelines''?

EPA drafted *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* to comply with a new Office of Management and Budget (OMB) guideline (67 FR 8451, February 22, 2002). Section 515 of the ''Treasury and General Government Appropriations Act for FY2001 (Pub. L. 106–554)'' directed OMB to issue government-wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by Federal agencies.'' EPA's ''Information Quality Guidelines'' will build upon on-going efforts to improve the quality of the data and analyses that are used to support Agency policy and regulatory decisions and programs.

EPA is seeking comments on many key areas of the ''Information Quality Guidelines'' developed thus far. Specific areas have been highlighted in a Request for Comments section of the ''Information Quality Guidelines''. After the comment period closes on May 31, 2002, EPA plans to submit the Agency's revised ''Information Quality Guidelines'' to OMB by July 1, 2002.

How Can I get Copies of the Draft EPA ''Information Quality Guidelines''?

EPA has established a public docket for these draft ''Information Quality Guidelines'' under Docket ID No. OEI–10014. The docket contains background information and supporting materials available for public viewing at: Northeast Mall, Room B607, 401 M Street SW., Washington, DC, 20460. This docket consists of a copy of the ''Information Quality Guidelines'', public comments received during the public comment period on the ''Information Quality Guidelines'', and other information related to the ''Information Quality Guidelines''. The docket is open from 12:00 pm to 4:00 pm EST, Monday through Friday, excluding legal holidays.

You may also access EPA's draft ''Information Quality Guidelines'' and other information related to this notice electronically at this web page: *www.epa.gov/oei/qualityguidelines.* To obtain a written copy of the draft ''Information Quality Guidelines'', you may contact: Ms. Evangeline Tsibris Cummings, U.S. Environmental Protection Agency, Office of

Environmental Information, Mail Code 2842T, 1200 Pennsylvania Avenue NW., Washington, DC, 20460; Telephone: 202–566–0621; or e-mail: *cummings.evangeline@epa.gov.*

EPA intends to make public comments and supplemental information that are received during the comment period available for public viewing via EPA's Web site at *www.epa.gov/oei/qualityguidelines*, as the Agency receives them and without change, unless the comments contain copyrighted material, Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Paper comments (with their attachments) will be scanned and placed on the web page. To the extent feasible, other supporting information for these guidelines may be placed on the web page as well. EPA will maintain a docket list of the materials that are available in the public docket, and will include this docket list with the other materials on the Web site.

How and To Whom Do I Submit Comments?

You may submit comments via EPA's Web site, electronic mail (e-mail), mail, facsimile, or in person. To ensure proper receipt of your comments by EPA, identify Docket ID No. OEI–10014 in the subject line on the first page of your comments.

Submitting comments via EPA's web page (*www.epa.gov/oei/qualityguidelines*) is the Agency's preferred method for receiving comments on the draft ''Information Quality Guidelines'' in order to ensure timely receipt. The Web site is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it. Please note, that EPA asks commenters to provide their names in order to comment via the Web site. These commenters' names will be included with their comments when they are placed on the EPA Web site for public viewing.

Comments may also be sent by e-mail to: *quality.guidelines@epa.gov*, Attention: Docket ID No. OEI–10014. In contrast to the Web site, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system will be posted on the Web site with comments received.

If you submit any type of electronic comment EPA recommends that you include your name, mailing address, and an e-mail address or other contact information with your comment. This ensures that you can be identified as the submitter of the comment and it allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or seeks further information on the substance of your comment. EPA's policy is to post comments, as they are submitted. Any identifying or contact information provided in the comment will be made available to the public via the Web site.

If you submit comments by U.S. mail, send two copies of your comments to: Evangeline Tsibris Cummings, Environmental Protection Agency, Office of Environmental Information, Mail Code 2842T, 1200 Pennsylvania Avenue, N.W., Washington, DC Attention: Docket ID No. OEI–10014.

If you submit comments in person, by courier, or other shipping method, deliver your comments to: U.S. EPA, 401 M Street SW., Washington, DC, 20460 Northeast Mall, Room B607, Attention: Docket ID No. OEI–10014. The docket is open from 12:00PM—4:00 PM EST Monday through Friday, excluding legal holidays. Send comments by fax to: 202–566–0706, Attention: Docket ID No. OEI–10014 and Attention: Ms. Evangeline Tsibris Cummings.

How Do I Participate in EPA's Public Meeting on the ''Information Quality Guidelines''?

EPA will convene a public meeting on May 15, 2002 in Washington, DC, for the purpose of receiving public comments on the draft *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency*. This meeting is open to the public. Please check the EPA Web site to confirm the location of the public meeting. EPA encourages you to register for the public meeting at: *www.epa.gov/oei/qualityguidelines* by May 3, 2002, to ensure timely receipt of your registration and to ensure that adequate space is provided and adequate time is allotted for those who wish to present comments. You may also register by contacting Ms. Evangeline Tsibris Cummings, U.S. Environmental Protection Agency, Office of Environmental Information, Mail Code 2842T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: 202–566–0621; e-mail: *cummings.evangeline@epa.gov.*

EPA will not be recording or transcribing the public meeting. To facilitate EPA's consideration of your planned comments, EPA recommends that you provide EPA with a written record of those comments you want EPA to consider, either at the public meeting or shortly thereafter via the methods described in this notice.

How Will EPA Use My Comments?

EPA will consider all comments received during the comment period as the Agency develops the final ''Information Quality Guidelines.'' Comments received after the close of the comment period may be considered as time permits. As appropriate, EPA intends to summarize or respond to significant comments when the Agency issues the final ''Information Quality Guidelines''. However, due to the limited time available, EPA does not expect to be able to respond to individual comments.

Dated: April 24, 2002.

Elaine Stanley,

Director, Office of Information Analysis and Access, Office of Environmental Information.

[FR Doc. 02–10626 Filed 4–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7202–8]

Proposed Settlement Under Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9622(h), Hermiston Lab Site, Hermiston, Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement and request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendment and Reauthorization Act (''CERCLA''), notice is hereby given of a proposed settlement to resolve a claim related to the Hermiston Laboratory Site. The proposed settlement concerns the federal government's past response costs at the Hermiston Laboratory Site, Hermiston, Oregon. The settlement requires the settling parties, Bill and Bonnie Kik, to pay $19,468.26 to the Hazardous Substance Superfund. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region 10, office at 1200 Sixth Avenue,

Seattle, Washington 98101. A copy of the proposed settlement may be obtained from Carol Kennedy, Regional Hearing Clerk, EPA, Region 10, 1200 Sixty Avenue (ORC–158), Seattle, Washington 98101, telephone number (206) 553–0242. Comments should reference the ''Hermiston Lab Site'' and EPA Docket No. CERCLA–10–2001–0194 and should be addressed to Ms. Kennedy at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Yackulic, Assistant Regional Counsel, EPA Region 10, Office of Regional Counsel, 1200 Sixth Avenue (ORC–158), Seattle, Washington 98101, telephone number (206) 553–1218.

Dated: April 12, 2002.

Ron Kreizenbeck,

Acting Regional Administrator, Region 10.

[FR Doc. 02–10630 Filed 4–29–02; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 2, 2002, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance.

The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- April 11, 2002 (Open)

B. Reports

- Corporate Approvals
- Preview of Capital Issues
- Conditions and Trends in the Bloomington Field Office Portfolio
- Early Warning System

Closed *

- OSMO Report

Dated: April 26, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–10707 Filed 4–26–02; 11:41 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2546]

Petition for Reconsideration of Action in Rulemaking Proceeding

April 24, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by May 15, 2002. See section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Part of the Commission's Rules to Allow Certification of Equipment in the 24.05–24.25 GHz band at Field Strengths up to 2500 mV/m (ET Docket No. 98–156).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–10543 Filed 4–29–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2545]

Petitions for Reconsideration of Action in Rulemaking Proceeding

April 23, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published to 47 CFR 1.429(e). The full text of these document are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by May 15, 2002. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 67 of the commission's rules and establishment of a joint board (CC Docket No. 80–286).

Amendment to uniform system of accounts and cost allocations rules for interconnection and infrastructure sharing (CC Docket No. 97–212).

In the Matter of 2000 Biennial Regulatory Review—Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2 and Phase 3 (CC Docket No. 00–199).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–10594 Filed 4–29–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1407–DR]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky, (FEMA–1407–DR), dated April 4, 2002, and related determinations.

EFFECTIVE DATE: April 19, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 4, 2002:

Lee, Morgan, Owsley and Powell Counties for Public Assistance. Letcher and Menifee Counties for Public Assistance (already designated for Individual Assistance).

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–10557 Filed 4–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1408–DR]

Tennessee; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee, (FEMA–1408–DR), dated April 5, 2002, and related determinations.

EFFECTIVE DATE: April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 5, 2002:

Bedford County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–10554 Filed 4–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1408–DR]

Tennessee; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee, (FEMA–1408–DR), dated April 5, 2002, and related determinations.

EFFECTIVE DATE: April 12, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Tennessee is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 5, 2002:

Dickson and Overton Counties for Public Assistance. (The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–10556 Filed 4–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1406–DR]

Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Virginia, (FEMA–1406-DR), dated April 2, 2002, and related determinations.

EFFECTIVE DATE: April 17, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov.*

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Virginia is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 2, 2002:

Dickenson, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wise Counties and the independent city of Norton for Public Assistance (previously designated for Individual Assistance).

Wythe County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Joe M. Allbaugh,

Director.

[FR Doc. 02–10555 Filed 4–29–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Cooperating Technical Partners Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of Cooperating Technical Partners Flood Hazard Mapping Program.

SUMMARY: FEMA gives notice of the requirements for the Cooperating Technical Partners Program (previously known as Cooperating Technical Communities initiative) for Fiscal Year (FY) 2002.

DATES: FEMA has $14 million available nationwide for funding partner projects in FY 2002.

FOR FURTHER INFORMATION CONTACT: The FEMA Regional Cooperating Technical Partners (CTP) Coordinators for your region. We list names, addresses, and telephone numbers for the Regional CTP Coordinators at the end of this Notice.

SUPPLEMENTARY INFORMATION:

Background

FEMA administers the National Flood Insurance Program (NFIP) and, under the authority of section 1360 of the National Flood Insurance Act of 1968 (42 U.S.C. 4101) establishes and updates flood-risk zone data in floodplain areas. In the identification of floodprone areas, we may consult with, receive information from and enter into agreements or other arrangements with the head of any State, regional, or local agency in order to identify these floodprone areas.

We are implementing the Cooperating Technical Partners (CTP) program as part of our Flood Map Modernization Program. The plan document for our Map Modernization Program and progress reports concerning the Program are available at *http://www.fema.gov/library/mapmod.pdf.* The program, previously known as the Cooperating Technical Communities program, formally recognizes and encourages the contributions that our Flood Hazard Mapping Partners (State agencies, regional agencies, tribal governments, and communities) make in developing timely and accurate flood hazard information. FEMA anticipates publishing regulations for this program by the end of fiscal year 2002. We strongly encourage partner contributions to flood hazard data development, which are a key part of the program.

Establishing formal partnerships with State, regional, and local organizations to produce NFIP maps is beneficial for the following reasons:

- The data used for local permitting and planning will also be the basis for the NFIP map, facilitating more efficient floodplain management;
- The CTP program provides the opportunity to interject a tailored, local focus into a national program; thus, where unique conditions may exist, we can take needed special approaches to flood hazard identification; and
- The partnership mechanism provides the opportunity to pool resources and extend the productivity of limited public funds.

Under this program, the partners will enter into a general overall agreement that recognizes the fundamental importance of flood hazard identification, flood insurance, and floodplain management. Then, through a collaborative process, the partners will identify the specific flood mapping activities to be undertaken. If this process results in CTP activities that we will support with FEMA funds, the partners will enter into a Cooperative Agreement and define the roles and responsibilities for each Flood Map Project through agreements termed Mapping Activity Statements. The intent of any Cooperative Agreement and accompanying funds that we award is to supplement and not to supplant ongoing mapping efforts by the community, regional agency, or State agency. Further, we envision that this collaborative process will maximize the extent, accuracy, and utility of flood studies to best meet local and Federal needs, while minimizing costs for all parties.

Additional guidance on the program is available at *http://www.fema.gov/mit/tsd/ctp_main.htm.*

Availability of Fiscal Year 2002 Funds

We have set aside approximately $15 million nationwide for use by all FEMA Regional Offices to fund CTP mapping activities in fiscal year 2002 (October 1, 2001 through September 30, 2002). We base the selection of CTP participants on floodplain mapping needs and capability to perform the types of eligible activities that we identified for the CTP program. A significant factor in the selection process will be the partner contribution to the project. We will provide funding to eligible CTP applicants through the Cooperative Agreement process in accordance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, which we will allocate as part of our flood study prioritization process. Upon publication of this notice, our Regional Offices will mail Request for Federal Assistance (RFA) packages to potential applicants.

Eligibility

Our Regional Offices will select partners based on the following criteria:

(1) The CTP applicant must be a community participating in the NFIP and be in good standing in the program as determined by FEMA, or be a State or regional agency that serves communities that participate in the NFIP.

(2) The CTP applicant must have existing processes or systems in place that support mapping or data collection activities that contribute to flood hazard identification. Non-federal funding must support these ongoing processes or systems.

(3) The CTP applicant must have the capability and commitment to perform the mapping activities for which it is applying. We require a demonstration of this capability, which an applicant may demonstrate through (but not limited to) a Regional Office review of both previously prepared map products and the applicant's existing processes or systems for the production of map products that the applicant intends to use for CTP activities.

(4) The CTP applicant that will receive funds under a Cooperative Agreement must be able to perform the financial management activities required as part of the Cooperative Agreement (i.e., account for Federal funds, prepare required performance and financial reports). Our Regional Offices can assist the communities with these financial management activities, if questions arise. FEMA-funded activities must meet the requirements of 44 CFR part 13. Part 13 sets forth requirements for proper grant administration and management including record-keeping, allowable costs, and the processes for use of contractors.

(5) The CTP applicant must have in-house staff capabilities in the appropriate technical area for the given activity. If the applicant contracts out a portion of the activities, the CTP applicant must have in-house staff capability to monitor the contractor as well as review and approve the resulting products. For these purposes, ''capability'' means ''demonstrated experience in the performance, or management of, similar activities.''

(6) CTP applicants that use contactors to perform FEMA-funded activities must ensure that those contractors meet the requirements of 44 CFR Part 13. Within Part 13, section 13.36 covers procurement standards that must be followed for any mapping-related activities for which the CTP applicant wishes to contract with another party. Items in this part include contract administration and record-keeping, notification requirements, review procedures, competition, methods of procurement, and cost and pricing analysis. If desired, our Regional Offices will provide assistance on developing selection criteria for contracted tasks. All work must meet the standards and certification requirements described in Subsections *Standards* and *Certification* below.

Activities

As stated previously, Mapping Activity Statements will define the roles and responsibilities of the all partners, including contractors to the CTP applicant and FEMA, in the production or maintenance of flood hazard maps. FEMA support may include technical assistance, data, and funding.

(1) Funded Activities: In Fiscal Year 2002, the following mapping activities are eligible for funding:

Activity	Partner	Description
Refinement or Creation of Zone A.	Community/Regional Agency/State Agency.	The CTP works with FEMA to perform analyses to refine Zone A boundaries shown on the effective FIRM or create new Zone A areas to be included on the FIRM. We will emphasize automated analysis and production techniques.
Hydrologic & Hydraulic (Modeling and Floodplain Mapping).	Community/Regional Agency/State Agency.	The CTP develops digital engineering data and floodplain mapping using Geographic Information System (GIS)-based or traditional hydrologic and hydraulic analysis methods.
Coastal Flood Hazard Analyses and Floodplain Mapping.	Community/Regional Agency/State Agency.	The CTP develops digital engineering data and floodplain mapping using GIS-based or traditional coastal flood hazard analysis methods.
Digital Flood Insurance Rate Map Preparation.	Community/Regional Agency/State Agency.	The CTP digitizes the effective hardcopy Flood Insurance Rate Map and prepares a Digital FIRM in accordance with FEMA specifications.
Re-delineation of Detailed Floodplain Boundaries Using Updated Topographic Data.	Community/Regional Agency/State Agency.	The CTP re-delineates the effective floodplain boundaries shown on the FIRM using more up-to-date topographic data. GIS technology is used, where available.

(2) *Other Activities:* While we will provide no funding to CTPs for the following mapping activities, we may provide technical assistance, support, and data to the CTP:

Activity	Partner	Description
Base Map Inventory	Regional Agency/State Agency.	The CTP performs an investigation and provides an inventory of base maps meeting FEMA specifications for NFIP communities.
Digital Base Map Data Sharing.	Regional Agency/State Agency.	The CTP supplies a base map for DFIRM production. The base map will comply with FEMA's minimum accuracy requirements and be distributable by FEMA to the public in hardcopy and electronic formats.
DFIRM Maintenance	Community/Regional Agency/State Agency.	The CTP assumes responsibility for long-term, periodic maintenance of the DFIRM. This can include base map and/or flood hazard information.
Hydrologic and Hydraulic Review Agreement (Pilot Activity).	Community/Regional Agency/State Agency.	The CTP reviews hydrologic and hydraulic studies prepared for FEMA-funded flood data updates and/or map revisions processed under the NFIP regulations in 44 CFR 65. The review will focus on compliance with the technical and regulatory requirements contained in various FEMA flood mapping guidelines and specifications, the pertinent NFIP flood mapping regulations, as well as standard accepted engineering practices.
Assessment of Community Mapping Needs (*to support FEMA's Mapping Needs Update Suppport System (MNUSS*)).	Regional Agency/State Agency.	The CTP performs a detailed community-by-community investigation and assessment of every NFIP community's mapping needs, including flood data updates, map maintenance, and includes unmapped communities. The CTP then submits the results of the assessment to FEMA for MNUSS database.
Technical Standards Agreement.	Community/Regional Agency/State Agency.	The CTP works with FEMA to adopt specific technical standards or processes appropriate for local conditions for NFIP flood mapping purposes.

Standards

Unless otherwise indicated in specific Mapping Activity Statements, all flood hazard identification activities will be accomplished according to the relevant portions of 44 CFR parts 59 through 77, as well as the technical standards contained in the most recent version of FEMA's *Guidelines and Specifications for Flood Mapping Partners,* which are set out at *www.fema.gov/mit/tsd/dl_cgs.htm.*

Certification

All data generated under CTP Mapping Activity Statements must meet the applicable certification requirements for the identification and publication of flood hazard information in Flood Insurance Rate Map (FIRM) form as indicated in 44 CFR 65, Identification and Mapping of Special Hazard Areas. For those States that have adopted more stringent mapping requirements that have been sanctioned by FEMA, all Mapping Activity Statements must be reviewed, coordinated with, and concurred upon by the State and all map products must meet State certification requirements.

Evaluation Criteria

Evaluation will be based on the following criteria:

(1) The continued maintenance (funded/supported by the CTP) for existing and/or future processes or systems in place to support mapping or data collection activities that contribute to flood hazard identification, *e.g.,* continued data collection for changing flood hazards and related development, continued upgrades to data collection or mapping capabilities to incorporate new technologies, preparation of multi-year mapping or data collection plans, *etc.;*

(2) The demonstrated commitment by the CTP for existing and continued support of flood hazard identification and mapping activities conducted with and by FEMA;

(3) Adherence to timeliness and completeness of performance and to financial report submittals to the Regional Office;

(4) Adherence to timeliness and completeness of mapping product submittals to the Regional Office;

(5) Quality of product(s) submitted to the Regional Office; and

(6) Ability to cooperate and coordinate with the Regional Office, FEMA Hazard Mapping Division of the Federal Insurance and Mitigation Administration in Washington, and/or the FEMA Flood Map Production Coordination Contractor during all phases of the mapping activity as needed.

We will evaluate the performance of each CTP upon completion of the period of performance for each Mapping

Activity Statement. This evaluation will determine the adequacy of the performance by the CTP and the eligibility for future Mapping Activity Statements to be initiated. Insufficient performance by the CTP may result in cancellation of FEMA funding at any point during the period of performance for a Mapping Activity Statement.

Cooperating Technical Partners Regional Contacts

The FEMA Regional Office contacts for the CTP programs are:

Region 1: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), Dean Savramis, 442 J.W. McCormack POCH, Boston, MA 02109, (telephone) (617) 223–9564, (e-mail) *dean.savramis@fema.gov.*

Region 2: (New Jersey, New York, Puerto Rico, Virgin Islands), Paul Weberg, 26 Federal Plaza, Room 1337, New York, NY 10278, (telephone) (212) 680–3638, (e-mail) *paul.weberg@fema.gov.*

Region 3: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of of Columbia), Martin Frengs, 615 Chestnut Street, 6th Floor, Philadelphia, PA 19106, (telephone) (215) 931–5532, (e-mail) *marty.frengs@fema.gov.*

Region 4: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Laura Algeo, 3003 Chamblee Tucker Rd., Atlanta, GA 30341, (telephone) (770) 220–5515, (e-mail) *laura.algeo@fema.gov.*

Region 5: (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), Ken Hinterlong, 536 S. Clark Street, 6th Floor, Chicago, IL 60605, (telephone) (312) 408–5529, (e-mail) *ken.hinterlong@fema.gov.*

Region 6: (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas), Jack Quarles, FRC 800 North Loop 288, Denton, TX 76210, (telephone) (817) 898–5156, (email) *jack.quarles@fema.gov.*

Region 7: (Iowa, Kansas, Missouri, and Nebraska), Bob Franke, 2323 Grand Avenue, Suite 900, Kansas City, MO 64108, (telephone) (816) 283–7073, (e-mail) *bob.franke@fema.gov.*

Region 8: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), John Liou, Denver Federal Center, Bldg. 710, Box 25267, Denver, CO 80225, (telephone) (303) 235–4836, (e-mail) *john.liou@fema.gov.*

Region 9: (Arizona, California, Hawaii, Nevada, American Samoa, Guam), Les Sakumoto, Bldg. 105, Presidio of San Francisco, San Francisco, CA 94129, (telephone)(415) 923–7183, (e-mail) *leslie.sakumoto@fema.gov.*

Region 10: (Alaska, Idaho, and Oregon, Washington), Larry Basich, Federal Regional Center, 130–228th Street, Bothell, WA 98021, (telephone) (425) 487–4703, (e-mail) *lawrence.basich@fema.gov.*

Dated: April 24, 2002.

Robert F. Shea,

Deputy Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–10559 Filed 4–29–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board– approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is the supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve 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.

Request for comment on information collection proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before July 1, 2002.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e– mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf

(TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposals to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report title: The Ongoing Intermittent Survey of Households
Agency form number: FR 3016
OMB control number: 7100–0150
Frequency: on occasion
Reporters:. households and individuals
Annual reporting hours: 390 hours
Estimated average hours per response: 3.92 minutes
Number of respondents: 500
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 15 U.S.C. 1691b). No issue of confidentiality normally arises because names and any other characteristics that would permit personal identification of respondents are not reported to the Board. However, exemption 6 of the Freedom of Information Act (5 U.S.C. 552(b)(6)) would exempt this information from disclosure.
Abstract: The Federal Reserve uses this voluntary survey to obtain household–based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities. The University of Michigan's Survey Research Center (SRC) includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The SRC conducts the survey by telephone with a sample of 500 households and includes questions of special interest to Board staff intermittently, as needed. The frequency and content of the questions depend on changing economic, regulatory, and legislative developments.

2. Report title: The Recordkeeping and Disclosure Requirement in Connection with Regulation M (Consumer Leasing)
Agency form number: Reg M
OMB control number: 7100–0202
Frequency: on occasion
Reporters: consumer lessors
Annual reporting hours: 11,160 hours disclosures; and 19 hours advertising
Estimated average hours per response: 18 minutes disclosures; and 25 minutes advertising
Number of respondents: 310
Small businesses are affected.
General description of report: This information collection is mandatory sections 105(a) and 187 of TILA (15 U.S.C. §§ 1604(a) and 1667f) is not given confidential treatment.
Abstract: The Consumer Leasing Act and Regulation M are intended to provide consumers with meaningful disclosures about the costs and terms of leases for personal property. The disclosures enable consumers to compare the terms for a particular lease with those for other leases and, when appropriate, to compare lease terms with those for credit transactions. The act and regulation also contain rules about advertising consumer leases and limit the size of balloon payments in consumer lease transactions. The information collection pursuant to Regulation M is triggered by specific events. All disclosures must be provided to the lessee prior to the consummation of the lease and when the availability of consumer leases on particular terms is advertised.

3. Report title: The Recordkeeping and Disclosure Requirement in Connection with Regulation DD (Truth in Savings)
Agency form number: Reg DD
OMB control number: 7100–0271
Frequency: Account disclosures, 500; change in terms notices, 1,130; prematurity notices, 1,015; disclosures on periodic statements, 12; and advertising, 12
Reporters: state member banks
Annual reporting hours: 146,644 hours
Estimated average hours per response: Account disclosures, 1.5 minutes; change in terms notices, 1 minute; prematurity notices, 1 minute; disclosures on periodic statements, 8 hours; and advertising, 30 minutes
Number of respondents: 976
Small businesses are affected.
General description of report: This information collection is mandatory. Section 269 of the Truth in Savings Act (12 U.S.C. § 4308) authorizes the Board to issue regulations to carry out the provisions of the Act. Since the Federal Reserve does not collect any information, the information collection is not given confidential treatment.
Abstract: The Truth in Savings Act and Regulation DD require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield earned during those statement periods. The act and regulation mandate the methods by which institutions determine the account balance on which interest is calculated. They also contain rules about advertising deposit accounts.

Board of Governors of the Federal Reserve System, April 25, 2002.

Robert deV. Frirson,

Deputy Secretary of the Board.

[FR Doc. 02–10623 Filed 4–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 14, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Friday Family (Beth Gore Friday, Mesa, Arizona; Allen Gore Friday, Atlantic, Iowa; Arthur Randall Friday, Houston, Texas; and Nola Kathleen Friday, Dallas, Texas); to retain voting shares of Anita Bancorporation, Atlantic, Iowa, and thereby indirectly retain voting shares of Rolling Hills Bank & Trust, Atlantic, Iowa.

A. Federal Reserve Bank of Minneapolis (Julie Stackhouse, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Alan L. Lerberg, Parshall, North Dakota; to acquire voting shares of Peoples Bankshares, Inc., Parshall, North Dakota, and thereby indirectly acquire voting shares of Peoples Bank and Trust, Parshall, North Dakota.

Board of Governors of the Federal Reserve System, April 24, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–10531 Filed 4–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 15, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. David Lee Gross, Champaign, Illinois; to acquire additional voting shares of First Beardstown Bancorp, Beardstown, Illinois, and thereby indirectly acquire additional voting shares of First State Bank of Beardstown, Beardstown, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Charles Donald Ransdell, Franklin, Illinois; to retain voting shares of Franklin Bancshares, Inc., Franklin, Illinois, and thereby indirectly retain voting shares of Franklin Bank, Franklin, Illinois.

Board of Governors of the Federal Reserve System, April 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–10619 Filed 4–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Carolina National Corporation, Columbia, South Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Carolina National Bank and Trust Company, Columbia, South Carolina.

Board of Governors of the Federal Reserve System, April 24, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–10530 Filed 4–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Midwest Bankers' Bancorporation, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Nebraska Bankers' Bank, National Association, Lincoln, Nebraska.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. J.R. Montgomery Bancorporation, Lawton, Oklahoma; to acquire an additional 11.8 percent, for a total of 50.1 percent of the voting shares of The Fort Sill National Bank, Fort Sill, Oklahoma.

Board of Governors of the Federal Reserve System, April 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–10620 Filed 4–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the

companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Royal Bank of Canada, Montreal, Canada; RBC Centura Banks, Inc., Rocky Mount, North Carolina; and Peach Acquisition Sub, Inc., Atlanta, Georgia; to acquire Eagle Bancshares, Inc., Tucker, Georgia, and thereby indirectly acquire Tucker Federal Bank, Tucker, Georgia, and thereby engage in operating a savings association; Eagle Bancshares Capital Group, Inc., Tucker, Georgia, and thereby engage in lending and lending-related activities; Prime Eagle Mortgage Corporation, Tucker, Georgia, and thereby engage in lending and lending-related activities; Eagle Service Corporation, Tucker, Georgia, and thereby engage in lending and lending-related activities; TFB Management, Inc., TFB Management (NC), Inc., and TFB Management (RE), Inc., all of Wilmington, Delaware, and thereby engage in lending and lending-related activities; and Hampton Oaks, LLP., Tucker, Georgia, and thereby engage in community development activities, pursuant to §§ 225.28(b)(1); 225.28(b)(2)(ii); 225.28(b)(2)(iv); 225.28(b)(4)(ii); and 225.28(b)(12)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, April 25, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–10621 Filed 4–29–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

Time and Date: 12 p.m., Monday, May 6, 2002.

Place: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

Status: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 26, 2002.

Margaret M. Shanks,

Assistant Secretary of the Board.

[FR Doc. 02–10790 Filed 4–26–02; 3:27 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The FTC seeks public comments on its proposal to extend through August 31, 2005 the current Paperwork Reduction Act (''PRA'') clearances for information collection requirements contained in four Commission rules and one category of administrative activities. Their clearances expire on August 31, 2002.

DATES: Comments must be filed by July 1, 2002.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Comments in electronic form should be sent to *pra@ftc.gov.* All comments should be identified as responding to this notice, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be sent to Gary Greenfield, Attorney, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Ave., NW., H–576, Washington, DC 20580, (202) 326–2753.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the regulations noted herein.

The FTC invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections 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 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.

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *pra@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of

the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

The relevant information collection requirements are as follows:

1. The Negative Option Rule, 16 CFR Part 425 (Control Number: 3084–0104)

The Negative Option Rule governs the operation of prenotification subscription plans. Under these plans, sellers ship merchandise such as books, compact discs or tapes automatically to their subscribers, and bill them for the merchandise if consumers do not expressly reject the merchandise within a prescribed time. The Rule protects consumers by: (a) Requiring that promotional materials disclose the terms of membership clearly and conspicuously; and (b) establishing procedures for the administration of such ''negative option'' plans.

Estimated annual hours burden: 14,000 total burden hours, rounded to the nearest thousand (all disclosure-related).

Staff estimates that approximately 179 existing clubs require annually about 75 hours each to comply with the Rule's disclosure requirements, for a total of 13,425 hours (179 clubs × 75 hours). These clubs should be familiar with the Rule, which has been in effect since 1974. Thus, the ''burden'' of compliance has declined over time. Moreover, comments provided to the FTC indicate that a substantial portion of the existing clubs likely would make these disclosures absent the Rule because they have helped foster long-term relationships with consumers.

Approximately 5 new clubs come into being each year. These clubs require approximately 120 hours to comply with the Rule, including start up-time. Thus, cumulative PRA burden for new clubs is about 600 hours. Combined with the estimated burden for established clubs, total burden is 14,025 hours or 14,000, rounded to the nearest thousand.

Estimated annual cost burden: $385,000, rounded to the nearest thousand (solely related to labor costs).

Based on recent Bureau of Labor Statistics, the average compensation for advertising managers is approximately $30 per hour. Compensation for clerical personnel is approximately $10 per hour. Assuming that managers perform the bulk of the work, while clerical personnel perform associated tasks (e.g., placing advertisements and responding to inquiries about offerings or prices), the total cost to the industry for the Rule's paperwork requirements would be approximately $384,700. [(65 hours managerial time × 179 existing negative option plans × $30 per hour) + (10 hours clerical time × 179 existing negative option plans × $10 per hour) + (115 hours managerial time × 5 new negative option plans × $30 per hour) + (10 hours clerical time × 5 new negative option plans × $10).]

Because the Rule has been in effect since 1974, the vast majority of the negative option clubs have no current start-up costs. For the few new clubs that enter the market each year, the costs associated with the Rule's disclosure requirements, beyond the additional labor costs discussed above, are *de minimis.* Negative option clubs already have access to the ordinary office equipment necessary to achieve compliance with the Rule. Similarly, the Rule imposes few, if any, printing and distribution costs. The required disclosures generally constitute only a small addition to the materials that a prospective subscriber sends to the seller to solicit enrollment in a negative option plan. Because printing and distribution expenditures are incurred regardless of the Rule to market the product, adding the required disclosures to them would result in marginal incremental expense.

2. The Amplifier Rule, 16 CFR Part 432 (Control Number: 3084–0105)

The Amplifier Rule assists consumers by standardizing the measurement and disclosure of power output and other performance characteristics of amplifiers in stereos and other home entertainment equipment. The Rule specifies the test conditions necessary to make the disclosures that the Rule requires.

Estimated annual hours burden: 600 hours (30 disclosure-related hours; 300 testing-related hours).

The annual burden is approximately 600 hours. The Rule's provisions require affected entities to test the power output of amplifiers in accordance with specified FTC protocol. Approximately 300 new amplifiers and receivers come on the market each year. Since high fidelity manufacturers routinely conduct performance tests as part of any new product development, the Rule imposes incremental costs only to the extent that the FTC protocol is more time-consuming than alternative testing procedures. Specifically, a warm up (''precondition'') period that the Rule requires before measurements are taken may add approximately one hour to the time testing entails. Thus, staff estimates that the Rule imposes approximately 300 hours (1 hour × 300 new products) of added testing burden annually.

The Rule requires disclosures if an advertisement makes a power output claim. Assuming that ten advertisements per magazine are placed each month in ten existing magazines featuring audio equipment advertisements, staff estimates that approximately 1,200 magazine advertisements annually would be required to carry the FTC disclosures. The cost of these disclosures is limited to the time needed to draft and review the language pertaining to power output specifications. Because this rule became effective in 1974, and because members of the industry are familiar with its requirements, compliance is less burdensome today. Accordingly, staff estimates the time involved for this task to be a maximum of ¼ hour per advertisement, for a total burden of 300 hours.[1] The total annual burden impose by the Rule is therefore approximately 600 burden hours for disclosures and testing.

Estimated annual cost burden: $19,000, rounded to the nearest thousand (solely relating to labor costs).

Based on recent Bureau of Labor Statistics, the average hourly compensation for electronics engineers is about $32, and the average hourly compensation for marketing, advertising and public relations managers is about $30. Generally, electronics engineers perform the testing of amplifiers and receivers (300 hours × $32 = $9,600), and marketing, advertising or public relations managers prepare advertisements (including required disclosures) (300 hours × $30 = $9,000). Based on this information, staff estimates the cost to the industry per year for the Rule's paperwork requirements to be approximately $19,000 per year.

The Rule imposes no capital or other non labor costs because its requirements are incidental to testing and advertising done in the ordinary course of business.

3. The Franchise Rule, 16 CFR Part 436 (Control Number: 3084–0107)

The Franchise Rule requires franchisors and franchise brokers to furnish to prospective investors a disclosure document that provides information relating to the franchisor, the franchisor's business, and the nature of the proposed franchise relationship, as well as additional information about any claims concerning actual or potential sales, income, or profits for a prospective franchisee (''earnings claims''). Franchisors must also preserve

[1] Staff has reduced this amount from prior PRA estimates to reflect recent amendments to the Rule (Dec. 22, 2000, 65 FR 81232). The amendments eliminated 3 of 4 disclosures that were required in media advertising (eliminated were disclosures of total rated harmonic distortion and the associated power bandwidth and impedance ratings).

the information that forms a reasonable basis for such claims. The Rule is designed to help potential investors from fraudulent claims.

The Rule's required disclosure document provides franchisees with information on twenty broad-ranging subjects that affect franchisors and the nature of the proposed franchise relationship. This includes not only generally available information, such as the official name and address and principal place of business of the franchisor, but also less commonly available information such as, among other things, the previous 5 years business experience of each of a franchisor's current directors and executive officers and whether any of these individuals has been convicted of a felony or embezzlement, or has filed in bankruptcy or been adjudged bankrupt during the previous 7 years. All information in the disclosure statement must be updated and revised according to the express time requirements set forth in the Rule.

Based on a review of the trade publications and information from state regulatory authorities, staff believes that, on average, from year to year, there are approximately 5,000 American franchise systems, consisting of 2,500 business format franchises and 2,500 business opportunity sellers, with perhaps about 10% of that total reflecting an equal amount of a new and departing business entrants.

Staff has calculated burden based on the above estimates and corollary assumption. Some franchisors, however, for various reasons, are not covered by the Rule in certain situations (e.g., when a franchisee buys bona fide inventory but pays no franchisor fees). Moreover, fifteen states have franchise disclosure laws similar to the Rule. These states use a disclosure document format known as the Uniform Franchise Offering Circular (''UFOC''). In order to ease compliance burdens on the franchisor, the Commission has authorized use of the UFOC in lieu of its own disclosure format to satisfy the Rule's disclosure requirements. Staff estimates that about 95 percent of all franchisors use the UFOC format. When that format is used, the franchisor is not required to prepare an additional federal disclosure document. The burden hours stated below reflects staff's estimate of the incremental burden that the Franchise Rule may impose beyond information requirements imposed by states and/or followed by franchisors who use the UFOC.

Estimated annual hours burden: 34,000 hours, rounded up to the next thousand (28,500 disclosure hours + 5,000 recordkeeping hours).

Staff estimates that the 500 or so new franchisors require approximately 30 hours each to develop a Rule-compliant disclosure document. Staff additionally estimates that the remaining 4,500 established franchisors require no more than approximately 3 hours each to update the disclosure document. The combined cumulative burden is 28,500 hours.

The franchisor may require additional recordkeeping of information pertaining to the sale of franchises in non-registration states. At most, franchisors would require an additional hour of recordkeeping per year. This yields a cumulative total of 5,000 hours per year for affected entities.

Estimated annual cost burden: $19,952,000 ($7,175,000 in labor costs; $12,777,000 in capital or other non-labor costs).

Labor costs are determined by applying applicable wage rates to associated burden hours. Staff assumes that an attorney likely would prepare or update the disclosure document. Accordingly, staff's estimate of the labor costs attributed to those tasks are as follow: (500 new franchisors × $250 per hour × 30 hours per franchisor) + (4,500 established franchisors × $250 per hour × 3 hours per franchisor) = &7,125,000.

Staff anticipates that recordkeeping would be performed by clerical staff at approximately $10 per hour. At 5,000 hours per year for all affected entities, this would amount to a total cost of $50,000. Thus, combined labor costs for recordkeeping and disclosure is approximately $7,175,000.

To comply specifically with the Rule, franchisors must incur costs to print and distribute the disclosure document. These costs vary based upon the length of the disclosures and the number of copies produced to meet the expected demand. Staff estimates that 2,500 business format and product franchisors print and mail 100 disclosure documents per year at a cost of $35 per document. Staff further estimates that another 2,500 business opportunity sellers print and mail 100 documents per year at a cost of $15 per document, for a total cost of $12,500,000.

The franchisor also must provide and disseminate an FTC cover sheet that identifies the franchisor, the date the document is issued, a table of contents, and a notice that tracks the language specifically provided in the Rule. Although some of the language in the cover sheet is supplied by the government for the purpose of disclosure to the public, and is thus excluded from the definition of ''collection of information'' under the PRA, *see* 5 CFR 1320.3(c)(2), there are residual costs to print and mail these cover sheets, including within them the presentation of related information beyond the supplied text. Staff estimates that 5,000 francisors complete and disseminate 100 cover sheets per year at a cost of approximately $.55 per cover sheet, or a total cost of approximately $277,000.

4. R-value Rule, 16 CFR Part 460 (Control Number: 3084–0109)

The R-value Rule establishes uniform standards for the substantiation and disclosure of accurate, material product information about the thermal performance characteristics of home insulation products. The R-value of an insulation signifies the insulation's degree of resistance to the flow of heat. This information tells consumers how well a product is likely to perform as an insulator and allows consumers to determine whether the cost of the insulation is justified.

Estimated annual hours burden: 366,000 hours, rounded to the nearest thousand (366,095 disclosure hours and 305 hours for testing and recordkeeping).

The Rule's requirements include product testing, recordkeeping, and third-party disclosures on labels, fact sheet, advertisements, and other promotional materials. Based on information provided by members of the insulation industry, staff estimates that the Rule affects: (1) 150 insulation manufacturers and their testing laboratories; (2) 1,500 installers who sell home insulation; (3) 130,000 new home builders/sellers of site-built homes and approximately 7,000 dealers who sell manufactured housing; and (4) 25,000 retail sellers who sell home insulation for installation by consumers.

Under the Rule's testing requirements, manufacturers must test each insulation product for its R-value. The test takes approximately 2 hours. Approximately 15 of the 150 insulation manufacturers in existence introduce one new product each year. The total annual testing burden is therefore approximately 30 hours (15 manufacturers × 2 hours per test).

Staff further estimates that most manufacturers require an average of approximately 20 hours per year with regard to third-party disclosure requirements in advertising and other promotional materials. Only the five or six largest manufacturers require additional time, approximately 80 hours each. Thus, the annual third-party disclosure burden for manufacturers is approximately 3,360 hours. [(144

manufacturers × 20 hours) + (6 manufacturers × 80 hours)].

While the Rule imposes recordkeeping requirements, most manufacturers and their testing laboratories keep their testing-related records in the ordinary course of business. Staff estimates that no more than one additional hour per year per manufacturer is necessary top comply with this requirement, for an annual recordkeeping burden of approximately 150 hours (150 manufacturers × 1 hour).

Installers are required to show the manufacturer's insulation fact sheet to retail consumers before purchase. They must also disclose information in contracts or receipts concerning the R-value and the amount of insulation to install. Staff estimates that two minutes per sales transaction is sufficient to comply with these requirements. Approximately 835,000 retrofit insulations are installed by approximately 1,500 installers per year and, thus, the related annual burden total is approximately 27,833 hours (835,000 sales transactions × 2 minutes). Staff anticipates that one hour per year per installer is sufficient to cover required disclosures in advertisements and other promotional materials. Thus, the burden for this requirement is approximately 1,500 hours per year (1,500 installers × 1 hour). In addition, installers must keep records that indicate the substantiation relied upon for savings claims. The additional time to comply with this requirement is minimal—approximately 5 minutes per year per installer—for a total of approximately 125 hours (1,500 installers × 5 minutes).

New home sellers must make contract disclosures concerning the type, thickness, and R-value of the insulation they install in each part of a new home. Staff estimates that no more than one minute per sales transaction is required to comply with this requirement, for a total annual burden of approximately 283,333 hours (1.7 million new home sales × 1 minute). New Home sellers who make energy savings claims must also keep records regarding the substantiation relied upon for those claims. Because few new home sellers make these claims, and the ones that do would likely keep these records regardless of the R-value Rule, staff believes that the one minute covering disclosures would also encompass this recordkeeping element.

The Rule requires that the approximately 25,000 retailers who sell home insulation make fact sheets available to consumers before purchase. This can be accomplished by, for example, placing copies in a display rack or keeping copies in a binder on a service desk with an appropriate notice. Replenishing or replacing fact sheets should require no more than approximately one hour per year per retailer, for a total of 25,000 annual hours, industry-wide.

The Rule also requires specific disclosures in advertisements or other promotional materials to ensure that the claims are fair and not deceptive. This burden is very minimal because retailers typically use advertising copy provided by the insulation manufacturer, and even when retailers prepare their own advertising copy, the Rule provides some of the language to be used. Accordingly, approximately one hour per year per retailer should suffice to meet this requirement, for a total annual burden of approximately 25,000 hours.

Retailers who make energy savings claims in advertisements or other promotional materials must keep records that indicate the substantiation they are relying upon. Because few retailers make these types of promotional claims, and because the Rule permits retailers to rely on the insulation manufacturer's substantiation data for any claims that are made, the additional recordkeeping burden is *de minimis*. The time calculated for disclosures, above, would be more than adequate to cover any burden imposed by this recordkeeping requirement.

To summarize, staff estimates that the Rule imposes a total of 366,331 burden hours, as follows: 150 recordkeeping and 3,390 testing and disclosure hours for manufacturer; 125 recordkeeping and 29,333 disclosure hours for installers; 283,333 disclosure hours for new home sellers; and 50,000 disclosure hours for retailers. Rounded to the nearest thousand, the total burden is 366,000 burden hours.

Estimated annual cost burden: $7,290,030 (solely related to labor costs).

The total annual labor costs for the Rule's information collection requirements is $7,290,030, derived as follows: $600 for testing, based on 30 hours for manufacturers (30 hours × $20 per hour for skilled technical personnel); $2,750 for complying with the recordkeeping requirements of the rule, based on 275 hours (275 hours × $10 per hour for clerical personnel); $33,360 for manufacturers' compliance with third-party disclosure requirements, based on 3,360 hours (3,360 hours × $10 per hour for clerical personnel); and $7,253,320 for compliance by installers, new home (362,666 hours × $20 per hour for sales persons).

There are no significant current capital or other non-labor costs associated with this Rule. Because the Rule has been in effect since 1980, members of the industry are familiar with its requirements and already have in place the equipment for conducting tests and storing records. New products are introduced infrequently. because the required disclosures are placed on packaging or on the product itself, the Rule's additional disclosure requirements do not cause industry members to incur any significant additional non-labor associated costs.

5. FTC Administrative Activities (Control Number: 3084–0047)

This category consists of: (a) applications to the Commission, including applications and notices contained in the Commission's Rules of Practice (primarily parts I, II, and IV); and (b) the FTC's Consumer Response Center.

Estimated annual hours burden: 78,000 hours, rounded to the nearest thousand.

Most applications to the Commission generally fall within the ''law enforcement exception'' to the PRA [2]; any burden associated with those that do not is de minimis. For example, over the last decade, the Commission has received only one application for an exemption under the Fair Debt Collection Practices Act provisions. Staff has estimated that such a submission can be completed well within 50 hours. Applications and notices to the Commission contained in other rules (generally in Parts I, II, and IV of the Commission's Rule of Practice) are also infrequent and difficult to quantify. Nonetheless, in order to cover any potential ''collections of information'' for which separate clearance has not been sought, staff is projecting 125 hours as its estimate of the time needed to submit any applicable responses.[3]

[2] The ''law enforcement'' exception to the PRA excludes most items in this subcategory because they involve collecting information during the conduct of a Federal investigation, civil action, administrative action, investigation, or audit with respect to a specific party, or subsequent adjudicative or judicial proceedings designed to determine fines or other penalties. *See* 44 U.S.C. 3518(c)(1); 5 CFR 1320.4(a)(1)–(3).

[3] This includes Rule 4.11(e), 16 CFR 4.11(e), which establishes procedures for agency review of outside requests for Commission employee testimony, through compulsory process or otherwise, in cases or matters to which the agency is not a party. The rule requires that a person who seeks testimony submit a statement in support of the request. Staff estimates that agency personnel receive roughly 2 such requests per month or 24 per year, and conservatively estimates that it would require up to 2 hours to prepare the statement, for a cumulative total of 24 hours.

The FTC's Bureau of Consumer Protection (''BCP'') uses various telephone complaint hotlines and, alternatively, three different consumer complaint forms to handle consumer grievances: (1) The general *www.ftc.gov* complaint form (for other than identify theft complaints); (2) the *www.consumer.gov* ''Know Fraud'' complaint form (essentially another way to access complaint form #1); and (3) the ''Identity Theft On-Line Complaint Form.''[4] The forms' completion is wholly voluntary.

Burden estimates for these BCP programs is as follows:

Annual hours burden:

Activity	No. of respondents	No. of minutes/activity	Total hours
Miscell. and fraud-related consumer complaints (phone)*	325,000	4.5	24,375
Miscell. and fraud-related consumer complaints (online)**	105,000	5.0	8,750
IDT complaints (phone)*	300,000	8	40,000
IDT complaints (online)**	32,000	7.5	4,000
Customer Satisfaction Questionnaire	9,000	4.0	600
Totals	771,000		77,725

*Number of consumer calls calculated by projecting over the 3-year clearance period sought 5% annual growth and a telephone contractor response rate of 95% (contracted level of service) with regard to consumers who call the toll free lines and opt to talk to a counselor.

**Number of online collections projected from consumers who use the FTC's online complaint forms noted in the text above and in footnote 3. These figures also assume 5% annual growth over the 3-year clearance period requested.

Annual cost burden: The cost per respondent should be negligible. Participation is voluntary, and will not require any labor expenditures by respondents. There are no capital, start-up operation, maintenance, or other similar costs to the respondents.

William E. Kovacic,

General Counsel.

[FR Doc. 02–10576 Filed 4–29–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of the action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—04/01/2002			
20020608	SPC Partners II, L.P	Santiago Aguerre	South Cone, Inc.
20020609	SPC Partners II, L.P	Fernando Aguerre	South Cone, Inc.
Transactions Granted Early Termination—04/02/2002			
20020560	Biovail Corporation	Merck & Co., Inc	Merck & Co., Inc.
20020573	Investment Technology Group, Inc	Hoenig Group, Inc	Hoenig Group, Inc.
20020581	MSC. Software Corporation	Mechanical Dynamics, Inc	Mechanical Dynamics, Inc.
20020594	Planar Systems, Inc	DOME imaging systems, inc	DOME imaging systems, inc.
Transactions Granted Early Termination—04/05/2002			
20020525	Andrew Corporation	Celiant Corporation	Celiant Corporation
20020531	Newell Rubbermaid Inc	Allen D. Petersen	American Tool Companies, Inc.
20020579	Nucor Corporation	The LTV Corporation (Debtor-in-Possession).	Trico Steel Company L.L.C.
20020592	Hubbell Incorporated	U.S. Industries, Inc	Dual-Lite Inc. LCA Group Inc.
20020607	Intelsat, Ltd	Lockheed Martin Corporation	COMSAT Corporation. COMSAT Digital Teleport, Inc.
20020611	Cadbury Schweppes plc	Ocean Spray Cranberries, Inc	Nantucket Allserve, Inc.
20020612	Charlesbank Equity Fund V. Limited Partnership.	Casual Male Corp	Casual Male Corp.
20020615	LGB Pike Trust	Joe B. Pike	Pike Equipment and Supply Company.

[4] The burden calculations for these online options also include related variations, which comprise the same basic ''collection of information'': (1) Spanish language versions also available at *www.ftc.gov,* (2) the *www.econsumer.gov* complaints form, but only with regard to complaints from U.S. or foreign consumers regarding U.S. companies, and (3) the FTC's planned *www.sentinel.mil* link for consumer complaints from U.S. military personnel as part of a joint initiative with the Department of Defense.

Trans #	Acquiring	Acquired	Entities
20020617	Alltrista Corporation	Bligh Limited	Tilia Canada, Inc. Tilia International, Inc. Tilia, Inc.
20020620	Fox Paine Capital Fund, L.P	Duke Energy Corporation	The HENS Companies.
20020621	Duke Energy Corporation	Fox Paine Capital Fund, L.P	The HENS Companies.
20020622	Launchworks, Inc	Viasource Communications, Inc	Viasource Communications, Inc.
20020624	On Assignment, Inc	Health Personnel Options Corporation	Health Personnel Options Corporation.
Transactions Granted Early Termination—04/08/2002			
20020543	Identix Incorporated	Visionics Corporation	Visionics Corporation.
20020599	Tricon Global Restaurants, Inc	Yorkshire Global Restaurants, Inc	Yorkshire Global Restaurants, Inc.
20020623	Avanex Corporation	Oplink Communications, Inc	Oplink Communications, Inc.
Transactions Granted Early Termination—04/10/2002			
20020552	Philip F. Anschutz	Edison International	Southern California Edison Company.
20020613	Cleco Corporation	Mirant Corporation	Perryville Energy Partners, L.L.C.
20020619	The Reader's Digest Associates, Inc	Madison Dearborn Capital Partners II, L.P	Reiman Holding Company, LLC.
Transactions Granted Early Termination—04/12/2002			
20020634	Don Tyson	Millard Refrigerated Services, Inc	Millard Refrigerated Services, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, or Chandra L. Kennedy, Contact Representatives. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–10577 Filed 4–29–02; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 011 0094]

Biovail Corporation; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 23, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov,* as prescribed below.

FOR FURTHER INFORMATION CONTACT: Joseph Simons or Bradley Albert, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3300 or 326–3670.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC home page (for April 23, 2002), on the World Wide Web, at ''*http://www.ftc.gov/os/2002/04/index.htm.*'' A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW, Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled ''confidential.'' Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *consentagreement@ftc.gov.* Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment

The Federal Trade Commission has accepted for public comment an agreement and proposed consent order with Biovail Corporation, settling charges that Biovail illegally acquired an exclusive patent license and wrongfully listed that patent with the U.S. Food and Drug Administration. The Commission has placed the proposed consent order on the public record for thirty days in order to receive comments by interested persons. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by Biovail Corporation that it violated the law or that the facts alleged in the complaint, other than the jurisdictional facts, are true.

Background

Biovail Corporation is a Canadian manufacturer of branded and generic pharmaceutical products, including Tiazac. Tiazac, a once-a-day diltiazem-based prescription drug that is at issue in this case, is used to treat high blood pressure and to decrease the occurrence

of chronic chest pain. In 2000, Tiazac's sales reached almost $200 million, accounting for 38 percent of Biovail's gross sales.

Andrx Pharmaceuticals, Inc., a Florida-based company that develops generic versions of branded pharmaceuticals, was the first company to submit an application to the U.S. Food and Drug Administration (''FDA'') to make and sell a generic version of Tiazac. Andrx's application to the FDA included a certification asserting that its generic product would not infringe any patent claiming Tiazac. At that time, the only patent known to claim Tiazac was U.S. Patent Number 5,529,791 (''the ''791 patent''), which covers aspects of Tiazac's once-a-day formulation.

As in several recent Commission matters, the facts of this case are set against the backdrop of the Drug Price Competition and Patent Term Restoration Act of 1984, commonly known as ''the Hatch-Waxman Act.'' Congress enacted the Hatch-Waxman Act to facilitate the entry of lower priced generic drugs, while maintaining incentives for pharmaceutical companies to invest in developing new drugs. In particular, the Hatch-Waxman Act established certain rights and procedures in situations where a company seeks approval from the FDA to market a generic product prior to the expiration of a patent or patents relating to the branded drug upon which the generic is based.

A generic drug is a pharmaceutical product that the FDA has determined to be bioequivalent to a branded drug. Generic drugs are chemically identical to their branded counterparts, but they typically are sold at substantial discounts from the branded drug's price. A Congressional Budget Office Report estimates that U.S. consumers saved an estimated $8–10 billion on prescriptions at retail pharmacies in 1994 by purchasing generic drugs instead of the branded product.[1]

Under the provisions of the Hatch-Waxman Act, a company seeking approval from the FDA to market a new drug must file a New Drug Application (''NDA'') demonstrating the safety and efficacy of its product. As part of this process, the NDA applicant also is required to submit to the FDA information on any patent claiming the approved drug and for which a claim of patent infringement could reasonably be asserted against another party. The FDA then lists the approved drug and its related patents in a publication entitled ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' commonly known as the ''Orange Book.''

The Hatch-Waxman Act also allows the listing of patents that are issued by the U.S. Patent and Trademark Office after an NDA has been approved.[2]

In order to receive FDA approval to market a generic version of a branded drug, a company must file an Abbreviated New Drug Application (''ANDA'') demonstrating that its product is bioequivalent to its branded counterpart. As part of the ANDA application process, the ANDA applicant also must provide a certification to the FDA regarding its generic product and any patents listed in the Orange Book that claim the reference branded drug. Under one form of certification, known as a ''Paragraph IV certification,'' the ANDA applicant certifies that the patents listed in the Orange Book either are invalid or will not be infringed by the manufacture, use, or sale of the drug products for which the ANDA is submitted.

The Hatch-Waxman Act further provides that notice of the Paragraph IV certification must be provided to each patent owner and the NDA holder for the listed drug. After receiving notice of a Paragraph IV certification, if the branded drug owner does not initiate a patent infringement suit within forty-five days, then the FDA's review and generic approval process may proceed according to the FDA's schedule. If, however, a patent infringement suit is filed within the forty-five day window, the FDA's approval of the ANDA is automatically stayed until the earliest of: (1) The date the patents expire; (2) a final determination of non-infringement or patent invalidity by a court in the patent litigation; or (3) the expiration of thirty months from the receipt of notice of the Paragraph IV certification (the ''30-month stay'').

Andrx filed the first ANDA for a generic version of Tiazac in June 1998. At that time, it provided a Paragraph IV certification to the FDA regarding the only patent then claiming Tiazac, the '791 patent. Within forty-five days of receiving Andrx's notice of certification, Biovail filed a patent infringement lawsuit, alleging that Andrx's generic Tiazac product would infringe the '791 patent. This lawsuit triggered a 30-month stay of final regulatory approval of Andrx's ANDA, which was to expire on February 26, 2001 (or earlier, if an appellate court decision was granted in Andrx's favor before that date).

On March 6, 2000, the U.S. District Court presiding over the patent infringement suit found that Andrx's product did not infringe the '791 patent.[3] Biovail appealed this decision to the U.S. Court of Appeals for the Federal Circuit. On September 29, 2000, while the appeal was still pending, the FDA tentatively approved Andrx's ANDA and informed Andrx that it would be eligible to receive final FDA approval upon expiration of the 30-month stay. This stay would have expired on February 13, 2001, the day the Federal Circuit affirmed the district court's ruling that Andrx's product did not infringe Biovail's '791 patent.

Before the Federal Circuit issued its decision, however, Biovail, on January 8, 2001, listed a second patent in the Orange Book as claiming Tiazac. Biovail acquired this patent, U.S. Patent No. 6,162,463 (''the '463 patent''), from DOV Pharmaceuticals, Inc., of New Jersey, through an exclusive licensing arrangement that also included plans to jointly develop new diltiazem products using the '463 patent. Because of this listing, Andrx was required to submit a second Paragraph IV certification asserting non-infringement of the '463 patent. After receiving Andrx's certification, Biovail filed a second patent infringement suit, triggering a second 30-month stay of the final approval of Andrx's ANDA, and further delaying the potential entry of Andrx's generic Tiazac product.

The Challenged Conduct

The Commission's complaint alleges that Biovail acquired exclusive rights to the '463 patent from DOV Pharmaceuticals, Inc., for the purpose of listing it in the FDA's Orange Book and thereby blocking Andrx's entry into the Tiazac market.

Two days after the U.S. Patent and Trademark Office issued the '463 patent, Biovail met with DOV to discuss a potential licensing agreement. Biovail sought to complete an exclusive licensing agreement with DOV by no later than January 19, 2001, the last date on which it could list the patent in the Orange Book and still be eligible to trigger Hatch-Waxman provisions that could result in a 30-month stay. Biovail listed the '463 patent in the Orange Book on January 8, four days before it actually completed the exclusive license agreement with DOV.

In its certification to the FDA supporting the listing of the patent, Biovail attested that the '463 patent claimed FDA-approved Tiazac.

[1] Congressional Budget Office, *How Increased Competition from Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry* at xiii & 13 (July 1998).

[2] 21 U.S.C. § 355(c)(2).

[3] *Biovail Corp. Int'l* v. *Andrx Pharm. Inc.,* 2000 WL 33354427 (S.D.. Fla. March 6, 2000).

According to the complaint, however, Biovail was aware that the '463 patent did not claim the formulation of Tiazac that it had been marketing. The product described in the '463 patent contains at least 1 percent of uncoated or ''free'' immediate-release diltiazem, in addition to extended-release diltiazem in the form of coated beads. By contrast, the only form of Tiazac that Biovail has ever sold contains only negligible amounts—that is, well below 1 percent—of uncoated immediate-release diltiazem. Accordingly, Biovail did not need the '463 patent in order to make or sell its existing FDA-approved formulation of Tiazac, and it could have continued to do so without infringing the '463 patent. Moreover, in prosecuting the patent before the U.S. Patent and Trademark Office, Dr. Lippa of DOV was required to distinguish the '463 patent from the prior art—including Biovail's Tiazac—before the patent examiner approved the patent. This suggests that the '463 patent could not simultaneously be valid and properly listed in the Orange Book for Tiazac.

After learning that DOV was unable to give it a license to the '463 patent because of Biovail's exclusive license, Andrx petitioned the FDA to require Biovail to de-list the '463 patent from the Orange Book. Although the FDA has publicly stated that it lacks the resources and the expertise to review patents submitted with NDAs and that it has only a limited ''ministerial role'' in listing patents,[4] a party may dispute the propriety of a patent listing, as Andrx did, by notifying the FDA. The FDA will then request that the NDA holder confirm that the listed patent information is correct. Unless the NDA holder voluntarily withdraws or amends its listing, however, the FDA will not change the patent information in the Orange Book. As one court has observed, the FDA's listing of a patent does ''not create any presumption that [a] patent was correctly listed'' in the Orange Book.[5]

On February 7, 2001, and again on February 22, 2001, the FDA, consistent with its limited ''ministerial role'' in listing patents in the Orange Book, sought confirmation from Biovail that the '463 patent was properly listed. The complaint alleges that on February 26, 2001, as a result of a court filing by Biovail in a federal lawsuit brought by Andrx to force Biovail to de-list the '463 patent,[6] the FDA learned that Biovail's position was that the '463 patent covered a new formulation of Tiazac that Biovail had developed only after it acquired and listed the '463 patent, rather than the version of Tiazac that the FDA had approved and that Biovail had been marketing. The FDA notified Biovail on March 20, 2001, that its new formulation of Tiazac was not approved by the FDA under the Tiazac NDA. Accordingly, the FDA would de-list the '463 patent from the Orange Book unless Biovail amended its certification to indicate that the patent claimed the version of Tiazac the FDA had approved.

In response to the FDA's inquiries, Biovail submitted a signed declaration stating that the '463 patent was eligible for listing in the FDA's Orange Book as claiming Tiazac. The complaint alleges that this declaration was misleading because it did not clarify whether the term ''Tiazac'' as used by Biovail meant the form of Tiazac the FDA had approved for marketing (as the FDA intended) or Biovail's revised form of the product. The FDA understood Biovail's March 26, 2001, declaration as affirming that the '463 patent covers the currently approved Tiazac product. On that basis, the FDA decided not to de-list the '463 patent from the Orange Book. According to the complaint, however, Biovail continued to assert that listing the '463 patent in the Orange Book was justified because it covers a revised form of Tiazac that Biovail believed fell within the Tiazac NDA, but which the FDA did not.

The complaint concludes that as a result of Biovail's conduct, consumers of Tiazac have been deprived of the benefits of lower-priced generic competition that might have been possible had Biovail not acquired exclusive rights to, and then listed, the '463 patent, thereby precluding the FDA from granting final approval to Andrx's generic Tiazac in February 2001.

Competitive Analysis

The complaint alleges that the relevant product market in which to assess the anticompetitive effects of Biovail's conduct is Tiazac and generic bioequivalent versions of Tiazac. Although other therapeutic agents can be used to treat high blood pressure and chronic chest pain, including several other branded and generic formulations of once-a-day diltiazem, these other therapeutic agents do not significantly constrain Tiazac's pricing. In contrast, entry of a generic bioequivalent version of Tiazac likely would result in a significant, immediate decrease in the sales of branded Tiazac, and lead to a significant reduction in the average market price paid for Tiazac and its generic bioequivalents. In fact, Biovail's own sales forecasts projected that generic Tiazac would have captured 40 percent of branded Tiazac sales within the first year alone.

The relevant geographic market in which to assess the competitive effects of Biovail's conduct is the United States, given the FDA's elaborate regulatory process for approving drugs for sale in the United States, and the fact that the marketing, sales, and distribution of pharmaceuticals, like Tiazac, occur on a nationwide basis.

The complaint thus alleges that, at all times relevant to this case, Biovail's market share of the relevant antitrust market has been 100 percent.

Biovail's conduct as described above, and as alleged in the complaint, violated the antitrust laws in two ways. First, Biovail's acquisition of an exclusive license to the '463 patent substantially lessened competition in the U.S. market for Tiazac and its generic equivalents. As stated in the complaint, Biovail's acquisition of the exclusive license to the '463 patent raised substantial barriers to Andrx's entry into the relevant market and gave Biovail the power to exclude competition, thereby protecting Biovail's monopoly in the Tiazac market, in violation of section 7 of the Clayton Act, 15 U.S.C. 18, and section 5 of the FTC Act, 15 U.S.C. 45.

The complaint also alleges that Biovail violated Section 5 of the FTC Act by engaging in acts that willfully maintained its Tiazac monopoly. These acts included: (a) acquiring an exclusive license to the '463 patent for the purpose of listing it in the Orange Book; (b) wrongfully listing the '463 patent in the Orange Book as claiming Tiazac, in order to be eligible for an automatic 30-month stay of FDA approval for any generic Tiazac product; and (c) giving non-responsive answers to questions raised by the FDA about the propriety of listing the '463 patent in the Orange Book, so as to avoid the possibility of de-listing. As the complaint states, Biovail's illegal monopolization raised substantial barriers to entry into the relevant market and gave Biovail the power to exclude competition. Biovail thereby deprived consumers of the benefits of lower-priced generic competition that might have been possible had the FDA not been precluded from granting final approval to Andrx's generic Tiazac. These acts and practices are anticompetitive in

[4] 59 FR 50338, 50345 (Oct. 3, 1994).

[5] *Ben Venue Labs., Inc.* v. *Norvartis Pharm. Corp.,* 10 F. Supp. 2d 446, 456 (D.N.J. 1998).

[6] The federal district court eventually rules that there is no private right of action under the Food, Drug, and Cosmetic Act for one company to require another to de-list a patent from the Orange Book. *Amdrx Pharm., Inc.* v. *Biovail Corp.,* 175 F. Supp. 2d 1362, 1373 (S.D. Fla. 2001).

nature and tendency, and constitute an unfair method of competition in violation of section 5 of the FTC Act, 15 U.S.C. 45.

The Proposed Order

The proposed order is designed to address the anticompetitive effects of Biovail's illegal conduct charged above, by requiring Biovail to divest part of its exclusive rights to the '463 patent and by providing other relief, on a prospective basis, to prevent or discourage recurrence of such conduct in the future. In essence, the proposed order:

- Requires that Biovail divest to DOV the exclusive rights to the '463 patent, as it applies for use in making any form of the currently marketed and FDA-approved Tiazac product.
- Prevents Biovail from taking any actions that would result in an additional 30-month stay of final FDA approval for a generic form of Tiazac.
- Prohibits Biovail from wrongfully listing any patents in the Orange Book in violation of applicable law.
- Requires that Biovail give the Commission prior written notice before it acquires an exclusive license to any patent that it plans to list in the Orange Book for a product for which Biovail already has an FDA-approved NDA.

By requiring that Biovail divest its exclusive rights in the ''463 patent in the ''Tiazac Field,'' that is, for use in making any form of the currently FDA-approved Tiazac, Paragraph II returns the market for Tiazac products to the status quo as it existed before the patent acquisition occurred. Paragraph II.A requires that Biovail divest to DOV its exclusive interest in the ''463 patent as it relates to the Tiazac Field. Paragraph II.B prevents Biovail from structuring the divestiture in such a way that it would be able to continue reaping the benefits of its acquisition of the patent. Paragraph II.C proscribes the creation of a confidentiality agreement that could hinder future Commission enforcement actions against Biovail under the order or the antitrust laws. Paragraph II.D prohibits Biovail from having any input into the future utilization of the patent in the Tiazac Field. Paragraph II.E prevents Biovail from participating in any lawsuits to enforce the ''463 patent in the Tiazac Field. Paragraph II.F requires Biovail to dismiss its patent infringement claim against Andrx.

Taken as a whole, Paragraph II removes Biovail's possession of exclusive rights in the ''463 patent (through which it was able to erect barriers to Andrx's potential entry), while preserving Biovail's and DOV's ability to innovate and develop new products using that same patent. Paragraph II allows Biovail to continue to use the ''463 patent, on an exclusive basis, to develop new diltiazem products that may result in the filing of an NDA with the FDA. Moreover, nothing in the paragraph prevents Biovail from holding non-exclusive rights to the ''463 patent to develop improved forms of the currently marketed Tiazac product.

If Biovail fails to complete the divestiture required in Paragraph II.A within ninety days of signing the Agreement Containing Consent Order in this matter, Paragraph III of the Proposed Order requires Biovail to enter into a trust agreement and transfer the assets set forth in Paragraph II.A to a trustee appointed by the Commission. The trustee will then have the sole and exclusive power to divest the assets required in Paragraph II.A, subject to the prior approval of the Commission. The trustee will have twelve months to accomplish the divestiture, at no minimum price, to a buyer or buyers approved by the Commission.

Paragraph IV is intended to remedy Biovail's allegedly illegal monopolization. By preventing Biovail from engaging in strategies that pharmaceutical companies have used to exploit the Hatch-Waxman Act to thwart generic entry, Paragraph IV seeks to ensure the entry of a generic Tiazac product at the earliest possible moment.

Paragraph V is intended to deter Biovail from listing patents in the Orange Book that do not actually claim the drug product at issue, and thus prevent the triggering of procedures under the Hatch-Waxman Act that could improperly block generic entry. The Commission is concerned that improper patent listings may be a recurring problem in the pharmaceutical industry, and that such listings have a significant potential to affect competition and harm consumers. NDA holders have the ability unilaterally to list patents in the Orange Book—and thus exclude potential generic competitors from entering the market and competing for up to thirty months—whether or not the patent they list actually claims the product approved under the NDA. Because the FDA views its role in listing patents as ''purely ministerial,'' and because there is no private right of action to challenge a patent listing under the Food, Drug, and Cosmetic Act,[7] or NDA holders, such as Biovail in this case, to obtain an additional thirty months free from generic competition by listing inappropriate patents in the Orange Book.

The Commission believes that the operative provisions in Paragraphs II through V of the proposed order strike an appropriate balance between Biovail's interests in acquiring patents for legitimate business purposes, such as developing new products using that intellectual property, and the Commission's intention to remedy an NDA holder's creation of barriers to generic competition through strategic patent acquisitions and the misuse of the Hatch-Waxman regulatory framework. By not imposing broad prohibitions on Biovail's ability to develop new products based on the ''463 patent, and by not preventing Biovail from legitimately acquiring and listing patents for other NDAs it may hold, the order maintains Biovail's incentive to develop and sell new drug products, while curbing the potential for Hatch-Waxman Act abuse.

Paragraph VI requires that Biovail submit written notification to the Commission before acquiring any patent or exclusive license on a patent, if Biovail also intends to seek the patent's listing in the Orange Book. Biovail will thus be free to continue acquiring intellectual property for legitimate business purposes, but the Commission will be notified in situations where there is a possibility that the acquisition of an exclusive license may serve to protect Biovail's dominant position in a relevant pharmaceutical market.

Paragraph VII sets forth the form of notice that Biovail must provide to the Commission under Paragraph VI of the order. In addition to supplying a copy of the patents to be acquired, Paragraph VII requires Biovail to provide certain other information to assist the Commission in assessing the potential competitive effect of the patent acquisition. Accordingly, the order requires Biovail to identify, among other things, the parties participating in the acquisition, the approved NDA(s) with respect to which the acquired patent will be submitted for listing in the Orange Book, and all persons who have filed an ANDA referencing the identified NDAs. In addition, Biovail must provide the Commission with copies of all transactional documents and other documents that evaluate the proposed licensing agreement.

Paragraphs VIII, IX, and X of the proposed order contain certain reporting and other standard Commission order provisions designed to assist the Commission in monitoring compliance with the order.

The order will expire in ten years.

[7] *Mylan* v. *Bristol-Myers Squibb Co.* 268 F.3d 1323, 1331–32 (Fed. Cir. 2001). See also *Andrx Pharm., Inc.* v. *Biovail Corp.,* 175 F. Supp. 2d 1362, 1373 (S.D. Fla. 2001).

Opportunity for Public Comment

The proposed order has been placed on the public record for thirty days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed order and the comments received and will decide whether it should withdraw from the agreement containing the proposed order or make the proposed order final.

By accepting the proposed order subject to final approval, the Commission anticipates that the competitive issues alleged in the complaint will be addressed. The purpose of this analysis is to facilitate public comment on the agreement. It is not intended to constitute an official interpretation of the agreement, the complaint, or the proposed consent order, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–10578 Filed 4–29–02; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for Disinfection and Sterilization in Healthcare Facilities

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice is a request for review of and comment on the *Draft Guideline for Disinfection and Sterilization in Healthcare Facilities, 2003*, available on the CDC website at *www.cdc.gov/ncidod/hip/dsguide.htm.* The guideline has been developed for practitioners who provide care for patients and who are responsible for monitoring and preventing infections in healthcare settings, especially those involved in sterilizing and disinfecting medical devices and surgical instruments. The guideline is intended to replace the section in *Guideline for Handwashing and Hospital Environmental Control, 1985,* that dealt with sterilization and disinfection.

DATES: Comments on the *Draft Guideline for Disinfection and Sterilization in Healthcare Facilities, 2003* must be received in writing on or before June 14, 2002.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the *Draft Guideline for Sterilization and Disinfection in Healthcare Facilities, 2003* should be submitted to the Resource Center, Attention: DSGuide, Division of Healthcare Quality Promotion, CDC, Mailstop E–68, 1600 Clifton Rd., NE, Atlanta, Georgia 30333; fax 404 498–1244; e-mail: *dsrequests@cdc.gov;* or Internet: *www.cdc.gov/ncidod/hip/dsguide.htm.*

ADDRESSES: Comments on the *Draft Guideline for Disinfection and Sterilization in Healthcare Facilities, 2003* should be submitted to the Resource Center, Attention: DSGuide, Division of Healthcare Quality Promotion, CDC, Mailstop E–68, 1600 Clifton Road, NE., Atlanta, Georgia 30333; fax 404 498–1244; e-mail: *dscomments@cdc.gov;* or Internet: *www.cdc.gov/ncidod/hip/dsguide.htm.*

SUPPLEMENTARY INFORMATION: The *Draft Guideline for Disinfection and Sterilization in Healthcare Facilities, 2003* presents a pragmatic approach to the judicious selection and proper use of disinfection and sterilization processes in healthcare settings. The guideline is intended to assist healthcare personnel in preventing infections associated with contaminated medical devices or surgical instruments and is targeted to infection control professionals, infectious disease clinicians, physicians who perform endoscopic procedures (e.g., gastroenterologists, pulmonologists), central processing technicians, sterile processing technicians, operating room nurses and technicians, manufacturers of disinfection and sterilization equipment, and manufacturers of reusable medical devices.

Part 1 of the two-part document provides information on chemical disinfectants recommended for patient-care equipment; these disinfectants include alcohol, glutaraldehyde, hydrogen peroxide, iodophors, ortho-phthalaldehyde, peracetic acid, phenolics, quaternary ammonium compounds, and sodium hypochlorite. Sterilization methods discussed include steam sterilization, ethylene oxide, hydrogen peroxide gas plasma, and liquid peracetic acid. Part 2 of the document provides consensus recommendations of the Healthcare Infection Control Practices Advisory Committee (HICPAC) for the practice of disinfection and sterilization in healthcare settings. Most recommendations are pertinent for the inpatient, outpatient, and home care setting, unless otherwise noted.

HICPAC was established in 1991 to provide advice and guidance to the Secretary and the Assistant Secretary for Health, DHHS; the Director, CDC; and the Director, National Center for Infectious Diseases, regarding the practice of infection control and strategies for surveillance, prevention, and control of healthcare-associated infections in U.S. healthcare facilities. The committee advises CDC on guidelines and other policy statements regarding prevention of healthcare-associated infections and related adverse events.

Dated: April 24, 2002.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 02–10550 Filed 4–29–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0116]

Agency Information Collection Activities; Proposed Collection; Comment Request; Veterinary Feed Directive (VFD)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including renewal of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements for distribution and use of VFD drugs and animal feeds containing VFD drugs.

DATES: Submit written or electronic comments on the collection of information by July 1, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug

Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–26, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Veterinary Feed Directive—21 CFR Part 558 (OMB Control No. 0910–0363)—Extension

Upon passage of the Animal Drug Availability Act, Congress enacted legislation establishing a new class of restricted feed use drugs called VFD, which can be distributed without involving State pharmacy laws. Although controls on the distribution and use of VFD drugs are similar to those for prescription drugs regulated under section 503(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353), the implementing VFD regulation under 21 CFR 558.6 is tailored to the unique circumstances relating to the distribution of medicated feeds. The content of the VFD is spelled out in the regulation. All distributors of medicated feeds containing VFD drugs must notify FDA of their intent to distribute, and records must be maintained of the distribution of all medicated feeds containing VFD drugs. The VFD regulation ensures the protection of public health while enabling animal producers to obtain and use needed drugs as efficiently and cost-effectively as possible. The respondents for VFD drugs are veterinarians, distributors of animal feeds containing VFD drugs, and clients utilizing medicated feeds containing VFD drugs.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
558.6(a)(3) through (a)(5)	15,000	25	375,000	0.25	93,750
558.6(d)(1)(i) through (d)(1)(iii)	1,500	1	500	0.25	125
558.6 (d)(1)(iv)	20	1	20	0.25	5
558.6(d)(2)	1,000	5	5,000	0.25	1,250
514.1(b)(9)	1	1	1	3.00	3
Total					95,133

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
558.6(c)(1) through (c)(4)	112,500	10	1,125,000	.0167	18,788
558.6(e)(1) through (e)(3)	5,000	75	375,000	.0167	6,263
Total					25,051

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation and maintenance is based on agency communication with industry. Other information needed to calculate the total burden hours is derived from agency records and experience.

Dated: April 19, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–10563 Filed 4–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0131]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic FDA Rapid Response Surveys

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on

the use of rapid response surveys to obtain data on safety information to support quick-turnaround decisionmaking about potential safety problems or risk management solutions from health care professionals, hospitals and other user-facilities (e.g., nursing homes, etc.), consumers, manufacturers of biologics, drugs and medical devices, distributors, and importers when FDA must quickly determine whether or not a problem with a biologic, drug, or medical device impacts the public health.

DATES: Submit written or electronic comments on the collection of information by July 1, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

FDA Rapid Response Surveys—New Collection

Section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355), requires that important safety information relating to all human prescription drug products be made available to FDA so that it can take appropriate action to protect the public health when necessary. Section 702 of the act (21 U.S.C. 372) authorizes investigational powers to FDA for enforcement of the act.

Under section 519 of the act (21 U.S.C. 360i), FDA is authorized to require manufacturers to report medical device-related deaths, serious injuries, and malfunctions to FDA and to require user facilities to report device-related deaths directly to FDA and to manufacturers, and to report serious injuries to the manufacturer. Section 522 of the act (21 U.S.C. 360l) authorizes FDA to require manufacturers to conduct postmarket surveillance of medical devices. Section 705(b) of the act (21 U.S.C. 375(b)) authorizes FDA to collect and disseminate information regarding medical products or cosmetics in situations involving imminent danger to health or gross deception of the consumer. Section 903(d)(2) of the act (21 U.S.C. 393(d)(2)) authorizes the Commissioner of Food and Drugs (the Commissioner) to implement general powers (including conducting research) to carry out effectively the mission of FDA. These sections of the act enable FDA to enhance consumer protection from risks associated with medical products usage that are not foreseen or apparent during the premarket notification and review process.

FDA's regulations governing application for agency approval to market a new drug (21 CFR part 314) and regulations governing biological products (21 CFR part 600) implement these statutory provisions.

Currently FDA monitors medical product related postmarket adverse events via both the mandatory and voluntary MedWatch reporting systems using FDA Forms 3500 and 3500A (OMB Control No. 0910–0291) and the vaccine adverse event reporting system.

FDA is seeking OMB clearance to collect vital information via a series of rapid response surveys. Participation in these surveys will be voluntary. This request covers rapid response surveys for community based health care professionals, general type medical facilities, specialized medical facilities (those known for cardiac surgery, obstetrics/gynecology services, pediatric services, etc.), other health care professionals, patients, consumers, and risk managers working in medical facilities.

FDA will use the information gathered from these surveys to obtain quickly vital information about medical product risks and interventions to reduce risks so the agency may take appropriate public health or regulatory action including dissemination of this information as necessary and appropriate.

FDA estimates the burden of this collection of information as follows:

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
200	30 (maximum)	6,000	0.5	3,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA projects 30 emergency risk related surveys per year with a sample of between 50 and 200 respondents per survey. FDA also projects a response time of 0.5 hours per response.

These estimates are based on the maximum sample size per questionnaire that FDA can analyze in a timely manner. The annual frequency of response was determined by the maximum number of questionnaires

that will be sent to any individual respondent. Some respondents may be contacted only one time per year, while other respondents may be contacted several times annually, depending on the human drug, biologic, or medical device under evaluation. It is estimated that, given the expected type of issues that will be addressed by the surveys, it will take 0.5 hours for a respondent to gather the requested information and fill in the answers.

Dated: April 19, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–10564 Filed 4–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0205]

Agency Information Collection Activities; Announcement of OMB Approval; Application for FDA Approval to Market a New Drug

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Application for FDA Approval to Market a New Drug'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 29, 2001 (66 FR 29143), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0001. The approval expires on March 31, 20005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 19, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–10561 Filed 4–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0359]

Craig H. Petrik; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. Craig H. Petrik from providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biologics license application. FDA bases this order on a finding that Mr. Petrik was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. After being given notice of his proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation, Mr. Petrik failed to request a hearing. Mr. Petrik's failure to request a hearing is deemed a waiver of his right to a hearing concerning this action.

DATES: This order is effective April 30, 2002.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

On January 19, 2001, the U.S. District Court for the Central District of California accepted a plea of guilty and entered a judgment against Mr. Petrik for one count of making a false statement to a government agency, a Federal felony under 18 U.S.C. 1001. As a result of this conviction, FDA sent a letter dated August 31, 2001, to Mr. Petrik proposing to issue an order to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biologics license application, and offering him an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) and (c)(2)(A)(ii) of the act (21 U.S.C. 355a(a)(2)(B) and (c)(2)(A)(ii)), that he was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Mr. Petrik was provided 30 days to file objections and request a hearing. Mr. Petrik did not request a hearing. His failure to request a hearing constitutes a waiver of his right to a hearing concerning the proposed order.

II. Findings and Order

Therefore, the Director, Center for Biologics Evaluation and Research, under section 306(a)(2)(B) of the act, and under authority delegated to her (21 CFR 5.99), finds that Mr. Craig H. Petrik has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

As a result of the foregoing finding, Mr. Craig H. Petrik is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application. A drug product means a drug, including a biological product, subject to regulation under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or section 351 of the Public Health Service Act (42 U.S.C. 262), effective April 30, 2002 (21 U.S.C. 335a(a)(2), (c)(1)(B), and (c)(2)(A)(ii), and 321(dd)). Any person with an approved or pending drug product application including, but not limited to, a biologics license application, who knowingly uses the services of Mr. Petrik, in any capacity, during his period of debarment, will be subject to civil money penalties (21 U.S.C. 335a(a)(6)). If Mr. Petrik, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application including, but not limited to, a biologics license application, he will be subject to civil money penalties (21 U.S.C. 335a(a)(7)).

Any application by Mr. Petrik for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 01N–0359 and sent to the Dockets Management Branch (see **ADDRESSES**). All such submissions are to be filed in four copies (§ 10.20(a) (21 CFR 10.20(a))). The public availability of information in these submissions is governed by § 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch

between 9 a.m. and 4 p.m., Monday through Friday (§ 10.20(j)(1)).

Dated: April 10, 2002.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 02–10562 Filed 4–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0318]

Medical Devices; Class II Special Controls Guidance Document: Hip Joint Metal/Polymer Constrained Cemented or Uncemented Prosthesis; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Class II Special Controls Guidance Document: Hip Joint Metal/Polymer Constrained Cemented or Uncemented Prosthesis.'' Elsewhere in this issue of the **Federal Register**, FDA is issuing a final rule to reclassify this type of device into class II.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies on a 3.5″ diskette of the guidance entitled ''Class II Special Controls Guidance Document: Hip Joint Metal/Polymer Constrained Cemented or Uncemented Prosthesis'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing you request, or fax your request to 301–443–8818. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: John S. Goode, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2036.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 6, 2001 (66 FR 46641), FDA published a proposed rule to reclassify the hip joint metal/polymer constrained cemented or uncemented prosthesis from class III (premarket approval) to class II (special controls) based on new information regarding this device contained in a reclassification petition submitted by the Orthopedic Surgical Manufacturers Association. FDA also identified the document ''Class II Special Controls Guidance Document: Hip Joint Metal/Polymer Constrained Cemented or Uncemented Prosthesis'' as the special control capable of providing reasonable assurance of safety and effectiveness for this device.

Interested persons were invited to comment on the draft guidance by December 5, 2001. FDA received three comments. Two comments commended FDA's proposal to reclassify these devices and agreed that the guidance proposed as the special control was adequate to provide reasonable assurance of the safety and effectiveness of the device. One comment stated that FDA's proposed special control was inadequate to protect against certain types of device failure, specifically shell-bone interface failure that may occur after implantation of this highly constrained device.

FDA agrees that shell-bone interface failure may occur after implantation of the device. FDA has revised the precaution section in the guidance document to clarify that it addresses device failure at the shell-bone interface.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). This guidance represents the agency's current thinking on special controls for the hip joint metal/polymer constrained cemented or uncemented prosthesis. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statutes and regulations.

III. Electronic Access

In order to receive the guidance entitled ''Class II Special Controls Guidance Document: Hip Joint Metal/Polymer Constrained Cemented or Uncemented Prosthesis'' via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1393) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available at http://www.fda.gov/ohrms/dockets.

IV. Comments

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (see **ADDRESSES**). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 15, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–10510 Filed 4–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Fiscal Year 2002 Competitive Application Cycle for the Radiation Exposure Screening and Education Program 93.257

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $3.0 million to eligible entities for the purpose of carrying out programs to develop education programs and disseminate information on radiogenic diseases and the importance of early detection; screen eligible individuals for cancer and other radiogenic diseases; provide appropriate referrals for medical treatment; and facilitate documentation of Radiation Exposure Compensation Program claims.

Authorizing Legislation: The Radiation Exposure Compensation Act (RECA) Amendments of 2000 amended Subpart I of Part C of Title IV of the Public Health Service Act to add section 417C, Grants for Education, Prevention, and Early Detection of Radiogenic Cancers and Diseases. Section 417C provides the authority for competitive grants to states, local governments, and appropriate healthcare organizations to initiate and support programs for individual cancer screening, appropriate medical referrals, public information development and dissemination, and the facilitation of RECA claim documentation to aid the thousands of individuals adversely affected by the mining, transport and processing of uranium and the testing of nuclear weapons for the Nation's weapons arsenal.

DATES: The timeline for application submission, review and award are as follows:

April 2002—Application guidance will be available through the HRSA Grants Application Center (GAC).

June 28, 2002—Applications due.

July 2002—Applications reviewed.

August 2002—Pre-award Site Visits.

September 2002—Grant awards announced.

Applications shall be considered to have met the deadline if they are: (1) received on or before the deadline date; or (2) postmarked on or before the deadline date. Late applications will be returned to the applicant. Applicants should obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service or request a legibly dated U.S. Postal Service postmark. Private metered postmarks shall not be accepted as proof of timely mailing.

Application requests: To receive a complete application kit (i.e., application instructions, necessary forms, and application review criteria), contact the HRSA Grants Application Center at: HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879, Phone: 1–877-HRSA–123 (1–877–477–2123), Fax: 1–877–HRSA–345 (1–877–477–2345), E-mail: *hrsagac@hrsa.gov.*

Please refer to Catalog of Federal Domestic Assistance (CFDA) #93.257.

Eligible applicants: The following entities are eligible to apply for the funds described in this notice:

- National Cancer Institute-designated cancer centers.
- Department of Veterans Affairs hospitals or medical centers.
- Federally Qualified Health Centers (FQHC), lookalikes, community health centers, or hospitals.
- Agencies of any State or local government that currently provide direct health care services.
- The IHS health care facilities, including programs provided through tribal contracts, compacts, grants, or cooperative agreements with the IHS and which are determined appropriate to raising the health status of Indians.
- Nonprofit organizations, including faith-based organizations.

Program expectations: The purpose of the RESEP is to encourage and support appropriate healthcare organizations to improve the health status of persons who were adversely affected by the mining, milling, or transporting of uranium and the testing of nuclear weapons for the Nation's weapons arsenal. The following is a summary of core activities that must be provided by all grantees:

- Outreach
- Screening and Early Detection
- Referrals for Medical Treatment
- Education
- Eligibility Assistance
- Quality Assurance
- Staffing
- Data Collection
- Finance
- Program Oversight and Direction

Application review and funding criteria: Each application submitted by the deadline will be screened for eligibility. An Objective Review Committee will review all eligible applications based on the review criteria listed below. Once a grant application has been reviewed and scored, the Bureau of Primary Health Care (BPHC) will determine the appropriate funding level given the level of services and users that are being proposed. An on-site pre-award review may be conducted for all applicants considered for funding and applicants competing for the same service area.

- Need and Readiness—the extent to which the applicant can demonstrate a need for these services in their area and their readiness to provide them.
- Administration—the extent to which the applicant demonstrates that it has the administrative experience and capacity to successfully implement this program.
- Health Care Services—the extent to which the applicant has the capacity to provide or arrange for the required services.
- Collaborative Arrangements—the extent to which the applicant has developed and documented collaborative arrangements with other local providers to conduct outreach, provide services and make referrals.
- Appropriateness of Budget—the extent to which the applicant's budget is appropriate for the scope of the proposed activities.

Grant awards will be made subject to the provisions of the Public Health Service Grants Policy Statement and to 45 CFR Parts 74 and 92.

Funding preferences and priorities: The BPHC intends to fund no more than one award in any single State. The goal of the BPHC is to award funds to organizations that can best provide comprehensive services to the largest number of eligible individuals in a cost-effective manner. In the final award determinations, the following factors will be used to select applications for funding. Funding preferences and priorities may come from legislation, regulations, or program leadership decisions. They are not the same as review criteria. Funding preferences are any objective factors used to re-order the post-review priority score funding list by moving applicants approved by the objective review committee (ORC) with those factors to the top of the ORC's rank order list. Funding priorities are those objective factors given extra points during the review or by staff after the ORC meets—which may similarly change the order of applicants on the list.

Funding Preferences

- Applicants that propose a Statewide service area.
- Applicants proposing to serve affected populations in the States of Arizona, Colorado, Idaho, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

Funding Priorities

- Applicants that are currently operating a clinic for patients with radiogenic cancers and other radiogenic diseases.
- Applicants that demonstrate strong outreach and educational efforts for eligible individuals.
- Applicants with a history of managing Federal grant funds without operational problems.

Estimated amount of available funds: Up to $3.0 million will be available in Fiscal Year 2002 for this program.

Estimated number of awards: It is estimated that 10–15 awards will be awarded with awards ranging from $200,000 to $400,000.

Use of grant funds: Grants will support appropriate cancer screening, referrals for treatment, the development and dissemination of educational information, and eligibility assistance for radiation exposure compensation. Such grants will encourage treatment to start at a time when it can be the most effective. Grant funds may not be used to pay for inpatient services; to make cash payments to intended recipients of primary health care services or specialty care; to supplant other provider/third party coverage payments available to the patient; to purchase or improve real property (other than minor remodeling of existing improvements to real property); or to purchase major medical equipment without the approval of the Office of Grants Management, BPHC. Not more than 10 percent of any grantee's funds shall be used for services to assist users in obtaining benefits under the Radiation Exposure Compensation Program.

FOR FURTHER INFORMATION CONTACT: Ms. Vanessa Hooker, Director, Radiation Exposure Screening and Education Program, Bureau of Primary Health Care, Health Resources Services Administration, 4350 East-West Highway, 9th Floor, Bethesda, Maryland 20814, Phone: 301–594–5105, Fax: 301–594–2470, E-mail: *vhooker@hrsa.gov.*

Public Health System Reporting Requirements

Under these requirements (approved by the Office of Management and Budget 0937–0195), a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date. This statement must include:

(a) A copy of the face page of the application (SF 424).

(b) A summary of the project, not to exceed one page, which provides:

- A description of the population to be served,
- A summary of the services to be provided, and
- A description of the coordination planned with the appropriate State and local health agencies.

Executive Order 12372

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States that have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review.

Applicants (other than Federally-recognized Indian tribal governments) should contact their State SPOC as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to ''accommodate or explain'' for State process recommendations it receives after that date. (*See* part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.)

Dated: April 3, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–10634 Filed 4–29–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Special Projects of National Significance: An Evaluation and Program Support Center for an HIV Prevention Initiative With HIV-Infected Individuals in Primary Care Settings

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of fiscal year (FY) 2002 funds to be awarded under the Special Projects of National Significance (SPNS) program for one (1) Evaluation and Support Center (Center) for an HIV Prevention Initiative with HIV-infected Individuals in Primary Care Settings. The purpose of this new grant initiative is to develop a Center to provide advice and technical assistance regarding program refinement and evaluation to multi-year projects that will be funded during FY 2003.

The SPNS program is authorized by Section 2691 of the Public Health Service (PHS) Act.

HRSA expects to make one award of no more than $300,000 per year for a 5-year project period to support a Center. This Center will initially work with SPNS staff to develop an overall multi-site evaluation of the prevention initiative. Subsequently, the Center will assist grantees on program development and evaluation issues. This is the first SPNS initiative in which an evaluation center will be funded 1 year before demonstration project sites. This approach will give the Center time to create a multi-site evaluation design for the initiative and hire staff before demonstration sites are funded.

During the first year of funding the Center will collaborate with SPNS to refine a proposed multi-site evaluation design for a behavioral intervention program. The Center will be responsible for describing the methods, theoretical framework, and principles of the evaluation design, including the criteria to select demonstration project sites. The Center also must identify how the multi-site evaluation design proposed may affect HIV-related risk behaviors and/or STD/HIV infection rates, and develop a technical assistance plan for grantees.

Throughout the initiative, the SPNS program expects the Center to describe the roles and characteristics of the clients, providers, and practitioners who participate in the interventions, and the prevention interventions used by grantees. In addition, the Center will gather information that will describe the effect of integrating proposed technological interventions into primary care structures and health care systems.

During year 2, the SPNS program anticipates that the Center will spend significant time providing technical assistance to grantees in the following areas: proposed program interventions, assessing interventions, evaluation, and data compilation. During year 3 the Center will continue providing technical assistance on data collection, including quality assurance of the data and identifying the barriers to the target populations of each grantee site. These tasks will continue during year 4 with the Center overseeing the data collection and conducting preliminary data analyses. During year 5 the Center will

conduct a final analysis and complete proposed papers, reports, and presentations for dissemination of findings. The Center will also collaborate with both the SPNS staff and the project sites to propose applicability of findings to other Ryan White Comprehensive AIDS Resources Emergency (CARE) Act settings and identify successful interventions that can be sustained through provider training. Specific deliverables and due dates with regard to all of the above are contained in the Program Announcement for the initiative, available from the HRSA Grants Assistance Center (GAC), cited below.

Eligible applicants may include public and private nonprofit entities. With regard to this initiative, all applicants must have significant experience evaluating HIV prevention, HIV care and treatment, and the integration of these endeavors.

This SPNS Initiative is designed to demonstrate and evaluate innovative and replicable HIV service delivery models with regard to HIV prevention in clinical settings. The authorizing legislation specifies three SPNS program objectives: (1) To support the development of innovative models of HIV care; (2) to evaluate the effectiveness of innovative program designs; and (3) to promote replication of effective models. Therefore, crucial factors in appraising proposals for a Center will include, among other factors, the degree to which the applicant's proposals address each of the following criteria:

1. Professional Qualifications of Personnel
2. Organizational Capacity
3. Work Plan
4. Product Development Activities
5. Appropriateness and Justification of the Budget
6. Adherence to Program Guidance

DATES: To allow HRSA to plan for the Objective Review Process, letters of intent are requested from all applicants. Such letters should be sent to: Barbara Aranda-Naranjo, PhD, RN, FAAN, Branch Chief, ATTN: 2002 HIV Prevention and Care Initiative, Demonstration Project Development and Evaluation Branch, Office of Science and Epidemiology, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7C–07, Rockville, MD 20857, or faxed to: 301 443–4965. Such letters should be received by SPNS within 30 days after the publication of this Notice of Availability of Funds in the **Federal Register**. Receipt of these notices of intent will not be routinely acknowledged.

EFFECTIVE DATE: Applications must be received in the HRSA GAC by the close of business June 12, 2002, to be considered for competition. Applications will meet the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

ADDRESSES: The official grant application kit and guidance materials for this announcement may be obtained from: The HRSA Grants Application Center, Attn: CFDA 93.928, 2002 HIV Prevention and Care Initiative, c/o The Login Group, Inc., 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879; telephone: 877–477–2123.

Applicants must obtain the Guidance in order to prepare applications. Please mail completed applications to the HRSA Grants Application Center, as per above. Applicants for grants will use Revised Form PHS 5161–1, approved under OMB Control No. 0937–0189. This form may also be downloaded from the DHHS Program Support Center (PSC) website at: *http://forms.psc.gov/forms/*. All applications submitted to the SPNS program will be reviewed and rated by an objective review panel.

FOR FURTHER INFORMATION CONTACT: Additional information regarding business, administrative, and fiscal issues related to the awarding of grants under this Notice may be requested from Ms. Mary Douglas, Grants Management Specialist, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–89, Rockville, MD 20857; telephone 301–443–1262; fax 301–594–6096; e-mail address *mdouglas@hrsa.gov.*

Additional information related to technical and program issues regarding the overall SPNS Program may be requested from Faye E. Malitz, M.S., Branch Chief, Attn: 2002 HIV Prevention and Care Initiative, Epidemiology and Data Analysis Branch, Office of Science and Epidemiology, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 7–90, Rockville, MD 20857; telephone 301–443–3259; fax 301–594–2511; e-mail address *fmalitz@hrsa.gov.*

Technical assistance regarding this funding announcement, may be requested from John Hannay, Special Program Consultant, Demonstration Program and Evaluation Branch, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 7C–07, Rockville, MD 20857; voicemail 301–443–0232; fax 410–730–6061; e-mail address *SPNS2002@aol.com.*

Healthy People 2010 Objectives: The PHS encourages applicants to address at least one of the Healthy People 2010 objectives related to HIV and AIDS in their work plans. Potential applicants may obtain a copy of Healthy People 2010 (Full Report) or Healthy People 2010 (Summary Report) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (website: *http://www.access. gpo.gov*; telephone: 202–512–1800).

SUPPLEMENTARY INFORMATION:

HIV prevention efforts to date have focused primarily on reducing the risk of infection among persons who are not infected with HIV. The programs of the Centers for Disease Control and Prevention (CDC) have generally focused on individuals not infected who engage in ''high risk'' sexual and drug using activities. However, recent research suggests that HIV-infected individuals also engage in risky activities.

These behaviors are frequent and appear to be increasing among HIV-infected populations. Several factors may be contributing to this trend. People using risk reduction behaviors may be tiring of doing so after more than 15 years of hearing prevention messages. Furthermore, treatment advances that have dramatically improved the health and quality of life for people infected with HIV may be leading persons to believe that transmission risk is low or HIV disease is easily managed.

Interventions targeting HIV-infected men and women are therefore needed. SPNS wants to know how HIV providers in primary care settings can contribute to the prevention of treatment resistant re-infection among persons who are already infected as well as the prevention of infections among those not infected who engage in ''high risk'' activities. Studies have shown that clinician-delivered prevention interventions can be effective with an array of other health issues. Furthermore, clinicians can often link patients needing intensive or ongoing behavioral interventions to other prevention services in the community. Recommendations for clinicians on how to incorporate risk screening and brief

intervention messages into regular office visits are currently under development by the joint efforts of CDC, HRSA, the National Institutes of Health, and the Infectious Disease Society of America.

Availability of Funds: The SPNS program is authorized by Section 2691 of the PHS Act. Grants may be awarded directly to public and non-profit private entities, including community-based organizations. The program has $1.5 million dollars available for this Center initiative, at $300,000 per year for 5 years. The budget and project periods for approved and funded projects will begin on or about September 1, 2002. Funds must be requested for all 5 years of the initiative.

All applicants funded should recognize that this initiative is not designed to provide continuous support once the initiative is complete and evaluated. Applicants are strongly encouraged to secure non-SPNS funding support during their initiative if the evaluation suggests that the Center is effective and merits continuation.

Eligible Applicants: The statute, Section 2691(a) specifies that grants may be awarded to public and non-profit private entities to fund special programs for the care and treatment of people with HIV disease. Eligible applicants may include, but are not limited to, State, local, or tribal public health, mental health, housing, or substance abuse departments; public or non-profit hospitals and medical facilities; faith-based and community-based service organizations (e.g., AIDS service organizations, federally-qualified health centers, family planning centers, AIDS anti-discrimination and advocacy organizations, homeless assistance providers, hemophilia centers, community mental health centers, substance abuse treatment centers, urban and tribal Indian health centers or facilities, migrant health centers, etc.), institutions of higher education (e.g., Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities), and national service provider and/or policy development associations and organizations.

Allowable Costs: The basis for determining allocable and allowable costs to be charged to PHS grants is set forth in 45 CFR Part 74 and 45 CFR Part 92 for State, local, or tribal governments. The four separate sets of cost principles prescribed for public and private non-profit recipients are: Office of Management and Budget (OMB) Circular A–87 for State, local or tribal governments; OMB Circular A–21 for institutions of higher education; 45 CFR Part 74, Appendix E for hospitals; and OMB Circular A–122 for non-profit organizations. Further information on allowable costs is contained in the Guidance.

Reporting and Other Requirements: In addition to deliverables described in guidance materials, the successful applicant under this notice must submit two semi-annual activity summary reports, in accordance with provisions of the general regulations which apply under 45 CFR Part 74.51 ''Monitoring and Reporting of Program Performance'' (with the exception of State and local governments to which 45 CFR Part 40 reporting requirements apply), and comply with audit requirements of OMB Circular A–133. Further, the PHS also strongly encourages all award recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In particular, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements: This program is also subject to the PHS Reporting Requirements which have been approved by the OMB under No. 0937–0195. Under these requirements, any community-based, non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to keep State and local health officials appraised of proposed health services grant applications submitted from within their jurisdictions. Instructions on this matter are contained in the Guidance for this initiative, available from the GAC, previously cited.

Executive Order 12372: The SPNS Grant Program is subject to the provisions of Executive Order 12372, concerning intergovernmental review of Federal Programs, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States which have chosen to set up a review system and will provide a State Single Point of Contact (SPOC) for the review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations under E.O. 12372 is 60 days after the application due date. HRSA does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and CFR part 100, for a description of the review process and requirements.)

Audit Requirements: Applicants are required to comply with requirements of OMB Circular A–133. For additional information on this topic, contact the Grants Management Specialist at 301–443–1262.

The OMB Catalog of Federal Domestic Assistance number for the Special Projects of National Significance is 93.928.

Dated: April 3, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–10512 Filed 4–29–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, Technical Assistance Resource Center for the Prevention of Violence and Behavioral Health Problems (SM 02–011), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002	Est. No. of awards	Project period years
Technical Assistance Resource Center for the Prevention of Violence and Behavioral Health Problems.	June 19, 2002	$3,900,000	1	3

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: Knowledge Exchange Network, P.O. Box 42490, Washington, DC 20015, 800–789–2647.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Administration (SAMHSA), Center for Mental Health Services (CMHS)—in collaboration with the Administration for Children and Families Office for Refugee Resettlement (AFC/ORR), the Department of Education, and the Department of Justice—announces the availability of Fiscal Year (FY) 2002 funds for a cooperative agreement to develop and operate a technical assistance (TA) resource center for the prevention of violence and behavioral health problems.

The TA Center will provide technical assistance to existing grantees and to prospective grantees. These two broad based functions are:

1. The TA Center will provide technical assistance to approximately 160 grantees from three CMHS Prevention Programs Safe Schools/Healthy Students, Youth Violence Prevention Cooperative Agreements, and Targeted Capacity Expansion in order to assist those grant sites in meeting their project objectives.

2. The TA Center will provide comprehensive outreach, consultation, and technical assistance to entities seeking Federal grant funding to support mental health promotion and violence prevention activities for underserved populations, including: racial and ethnic minorities, refugees, and individuals in low-income rural communities.

Eligibility: Eligibility is open to domestic, public, and private not-for-profit entities. For example, the following are eligible to apply:

- Community based organizations.
- Private and public colleges and universities, including minority institutions of higher learning (historically black colleges and universities, Hispanic-serving institutions, and tribal colleges and universities).
- Social policy research centers.
- Consumer-run organizations.
- Faith-based organizations.

Availability of Funds: One award will be made up for $3.9 million annually to cover total costs (direct and indirect) for this initiative. The actual funding level will depend on the availability of funds.

Period of Support: Support may be requested for up to 3 years. Annual continuation awards depend on the availability of funds and progress achieved.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: John Tuskan, Acting Branch Chief, Special Programs Development Branch, Center for Mental Health Services, 5600 Fishers Lane, Room 17–C–05, Rockville MD, 20857, (301) 443–1761, Email: *jtuskan@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane 13–103, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep state and local health officials apprized of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and

promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 24, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–10513 Filed 4–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, Workforce Training Grants to Reduce Racial and Ethnic Disparities in Mental Health Services (SM 02–005), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002	Est. No. of awards	Project period (years)
Workforce Training Grants to Reduce Racial and Ethnic Disparities in Mental Health Services.	June 19, 2002	$1,600,000	4	3

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: Knowledge Exchange Network, P.O. Box 42490, Washington, DC 20015, 800–789–2647.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS) announces the availability of fiscal year 2002 funds for up to four grants to develop, implement, document, and evaluate training programs designed to enhance the ability of mental health providers to provide culturally and linguistically appropriate services to racial and ethnic minorities. By implementing this program, CMHS plans to identify effective ''workforce training'' models that improve the capacity of the mental health workforce and the mental health system to engage, treat, and support racial and ethnic minority persons with mental illnesses or serious emotional disturbance.

Eligibility: Applications may be submitted by units of State and local or Indian tribal governments, universities and colleges, and domestic private organizations, health care delivery systems, consumer and family organizations, tribal organizations and others.

Minority-based non-profit organizations are encouraged to apply. These include:

- Organizations and agencies serving bilingual/bicultural racial and ethnic minority populations.
- Historically Black Colleges and Universities.
- Tribal Colleges and Universities.
- Hispanic Association of Colleges and University members.

Availability of Funds: Approximately $1.6 million will be available for four Workforce training grant awards. The average annual award will range from $300,000 to $400,000 in total costs (direct and indirect). Actual funding levels will depend on the availability of funds.

Period of Support: Grant support may be requested for a period of 3 years (in three separate 1-year budgets). Annual continuation awards depend on the availability of funds and progress achieved.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications: Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact: For questions concerning program issues, contact: Kana Enomoto, Public Health Advisor, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 11C–25, Rockville, MD 20857, (301) 443–9324, E-mail: *kenomoto@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Grants Management Specialist, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane 13–103, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements: The Public Health System Impact Statement (PHSIS) is intended to keep state and local health officials apprized of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement: The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372: Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 24, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–10514 Filed 4–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of FY 2002 funds for grants for the following activity. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Guidance for Applicants (GFA), including Part I, Targeted Capacity Expansion (TCE) Grants for Jail Diversion Programs (SM 02–010), and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002	Est. No. of awards	Project period (years)
Targeted Capacity Expansion (TCE) Grants for Jail Diversion Programs.	June 19, 2002 and September 10, 2002.	$4,000,000	11	3–4

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: Knowledge Exchange Network, P.O. Box 42490, Washington, DC 20015, 800–789–2647.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose

The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Mental Health Services (CMHS) announces the availability of fiscal year 2002 funds for programs to divert individuals with mental illness from the criminal justice system to the mental health treatment and appropriate support services. These grants or cooperative agreements are made as part of SAMHSA/CMHS Targeted Capacity Expansion (TCE) Program.

This GFA on Jail Diversion, based on the Public Health Service Act Section 520G, is coordinated with the Department of Justice's solicitation ''Mental Health Court Grants Program,'' authorized in Public Law 106–515, Part V, Section 2201.

It is the intention of both agencies to collaborate on both the implementation and analysis of these two programs. The overall goal of this collaboration is to improve policy and practice for addressing the needs of persons with a mental illness or co-occurring disorder who become involved with the criminal justice system.

The SAMHSA, CMHS Jail Diversion Program will support two types of awards.

(1) Capacity Expansion Site Awards.

SAMHSA will fund up to 10 grants to support programs that divert programs with mental illness from the criminal justice system to community health and supportive services (submission date: June 19, 2002). Additional funds are expected to be available in the FY 2003 budget to fund a second group of Capacity Expansion Sites (submission date September 10, 2002).

(2) Technical Assistance and Policy Analysis (TAPA) Center Award.

SAMHSA will fund one grant to create the TAPA Center during FY 2002 (submission date: June 19, 2002). The Center's primary focus will be to address the technical assistance and policy development needs of *mental health* stakeholders and to assist in serving other potential stakeholders.

Eligibility

As specified by the Public Health Service Act 520G, eligibility to apply for Capacity Expansion Site Awards will be limited to the chief executive of a State, political subdivision of States, Indian Tribes, and tribal organizations, acting through agreements with other public and nonprofit entities to develop and implement programs to divert individuals with mental illness from the criminal justice system to community-based services. Thus, all applications must be signed by the chief executive of their State, political subdivision of State, Indian tribe, or tribal organization.

Eligibility to apply for the TAPA Center Award includes States, political subdivisions of States, Indian Tribes, and tribal organizations. In addition, the following entities are eligible:

- Public or private universities.
- Nonprofit agencies.

Interested parties who do not meet these criteria, including faith-based organizations, consumer organizations, and organizations representing people of color, are encouraged to partner with other agencies that are involved in preparation of the application.

Availability of Funds

Approximately $3 million will be available in FY 2002 for Capacity Expansion Site Awards. Awards of no more than $300,000 in total costs (direct and indirect) will be awarded per grant per year. In addition, applicants must provide a non-federal share of 25%. The applicant non-federal share may be made in cash or in kind fairly evaluated, included planned purchase or use of equipment or implementation or required services for clients in the diversion program.

$1 million in total costs (direct and indirect) will be awarded during FY 2002 for the Technical Assistance and Policy Analysis (TAPA) Center Award. As part of the collaboration between the Center for Mental Health Services (CMHS) and the Department of Justice (DOJ), the TAPA Center will invest 25% of its technical assistance resources to providing technical assistance to DOJ Mental Health Court grantees and constituents. Conversely, DOJ will mandate that 25% of their Technical Assistance Center(s) budget will be devoted to providing technical assistance to the Capacity Expansion Sites grantees, other mental health grantees, and constituents.

Period of Support

Each Capacity Expansion Site is eligible to receive funding for up to 3 years. Annual awards will be made subject to continued availability of funds and progress achieved by awardees. The Technical Assistance and Policy Analysis Center is eligible to receive funding for up to 4 years. Annual continuation awards will be made subject to continued availability of funds and progress achieved by the TAPA Center grantee.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact

For questions concerning program issues, contact: Susan Salasin, Room 11C–22, 5600 Fishers Lane, Rockville, MD 20857, (301), 443–3653 E-mail: *ssalasin@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane 13–103, Rockville, MD 20857, (301) 443–9666, E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep state and local health officials apprized of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 24, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–10515 Filed 4–29–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–08]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St. SW., Room B133–P3214, Washington, DC 20410; telephone (202) 708–2830 (This is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The Termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the eighth review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance

endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee Name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
American Mortgage Link Inc ..	260 First Avenue North, St Petersburg, FL 33701.	Tampa, FL	12/21/2001	Atlanta.
Dynamic Financial Consultants.	502 Hamburg Turnpike, Ste 208, Wayne, NJ 07470.	Newark, NJ	12/21/2001	Philadelphia.
Family Home Loan Inc	12555 Lakewood Blvd, Ste F, Downey, CA 90242.	Santa Ana, CA	12/17/2001	Santa Ana.
Irwin Mortgage Corporation ...	721 Lyons Road, Dayton, OH 45406.	Cincinnati, OH	12/21/2001	Philadelphia.
Neighborhood Mortgage Bankers Inc.	695 Bloomfield Avenue, Montelair, NJ 07042.	Newark, NJ	09/16/2001	Philadelphia.
Park Shore Mortgage Corp	3645 Bonita Beach Rd SE, Ste 1, Bonita Springs, FL 34134.	Coral Gables, FL	12/17/2001	Atlanta.
Sanmar Financial Group Inc ..	110 West Ocean Blvd, Ste 611, Long Beach, CA 90802.	Los Angeles, CA	09/16/2001	Santa Ana.

Dated: April 24, 2002.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 02–10601 Filed 4–29–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–09]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St. SW., Room B133–P3214, Washington, DC 20410; telephone (202) 708–2830. (This is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The Termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the

preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the ninth review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as set forth by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Advantage Investors Mortgage Corp.	8500 Stemmons Frwy, Ste 2020, Dallas, TX 75247.	Dallas, TX	01/24/2002	Denver.
American Mortgage Corp	Road No 2 KM. 12.3 Bayamon, PR 00621	San Juan, PR	01/24/2002	Atlanta.
Continental Mortgage Corp	457 Ponce De Leon Ave, 2ND FL., San Juan, PR 00917.	San Juan, PR	01/24/2002	Atlanta.
Dalma Corp	5468 Memorial Drive, Suites C&D, Stone Mountain, GA 30083.	Atlanta, GA	11/27/2001	Atlanta.
EFG Financial Inc	901 Corporate Center Drive 502, Monterey Park, CA 91754.	Los Angeles, CA	11/27/2001	Santa Ana.
First Residential Mortgage	1100 East Park Drive, Ste 200, Birmingham, AL 35235.	Birmingham, AL	11/27/2001	Atlanta.
Georgetown Mortgage Inc	4360 Georgetown Square, Ste. 800, Atlanta, GA 30338.	Atlanta, GA	01/24/2002	Atlanta.
Irwin Mortgage Corp	12015 Justice Ave., Baton Rouge, LA 70816.	New Orleans, LA	11/27/2001	Denver.
Keystone Mortgage and Investment Co.	809 N 5th Ave., Phoenix, AZ 85003	Phoenix, AZ	01/24/2002	Santa Ana.
Mirad Financial Group Inc	20951 Brookhurst St. #25, Huntington Beach, CA 92646.	Santa Ana, CA	01/24/2002	Santa Ana.
Omega Financial Services Inc	11711 Whittier Blvd., M Whittier, CA 90601	Los Angeles, CA	11/27/2001	Santa Ana.
On-Line Mortgage Express	1501 W. 9th Street, Upland, CA 91786	Santa Ana, CA	01/24/2002	Santa Ana.
Pacific Network Funding Inc	16025 E Gale Ave, Ste B–5, City of Industry, CA 91745.	Santa Ana, CA	01/24/2002	Santa Ana.
Pine State Mortgage Corp	6065 Roswell Rd NE, Ste 120, Atlanta, GA 30328.	Atlanta, GA	01/24/2002	Atlanta.
Tri-Mex Mortgage Corp	3345 Wilshire Blvd, Ste 1100, Los Angeles, CA 90010.	Los Angeles, CA	11/27/2001	Santa Ana.
Tri-Mex Mortgage Corp	3345 Wilshire Blvd, Ste 1100, Los Angeles, CA 90010.	Santa Ana, CA	11/27/2001	Santa Ana.
White Oak Mortgage Group LLC.	7101 Creedmoor Rd, Ste 101, Raleigh, NC 27613.	Greensboro, NC	01/24/2002	Atlanta.

Dated: April 24, 2002.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 02–10602 Filed 4–29–02; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collections Submitted to the Office of Management and Budget for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comments.

SUMMARY: The collection of information described below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address provided below.

DATES: Consideration will be given to all comments received on or before July 1, 2002. OMB has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by the above referenced date.

ADDRESSES: Comments and suggestions on the requirement should be sent to Rebecca Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 860–ARLSQ, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at 703/358–2287, or electronically to *rmullin@fws.gov.*

SUPPLEMENTARY INFORMATION: The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). On Friday, December 21, 2001, the U.S. Fish and Wildlife Service (Service) was given emergency approval by OMB for collection of information in order to quickly implement the grant program to be conducted under the Neotropical Migratory Bird Conservation Act (Pub. L. 106–247). The assigned OMB information collection control number is 1018–0113, and temporary approval expires June 30, 2002. The Service is requesting a three year term of approval for this information collection activity. 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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

Title: Information Collection In Support of Grant Programs Authorized by the Neotropical Migratory Bird Conservation Act of 2000 (NMBCA).

Approval Number: 1018–0113.

Service Form Number(s): N/A.

Description and Use: The purposes of the Neotropical Migratory Bird Conservation Act (Act) are to: (1) Perpetuate healthy populations of neotropical migratory birds; (2) assist in the conservation of these birds by supporting conservation initiatives in the United States, Latin America, and the Caribbean; and (3) provide financial resources and foster international cooperation for those initiatives.

The Act authorizes $5 million for this program, and Congress appropriated $3 million for Fiscal Year 2002. At a minimum, 75% of this money will be available for projects outside the United States. No maximum request has been established. The match ratio is 3:1, calculated in U.S. dollars. That is, every grant dollar requested under the Act must be matched by 3 partner dollars. U.S.-Federal funds may be used to support projects, but may not be used as match. Partner funds for U.S. projects must be in cash, whereas funds for projects in Latin America and the Caribbean may be cash or in-kind contribution.

Projects may be located in the United States and in all countries of Latin America and the Caribbean, with the exception of Cuba. Projects in Canada are not eligible for this funding. An applicant may be an individual, corporation, partnership, trust, association, other private entity, government agency in the U.S. or a foreign country, or an international organization.

The Act describes activities which may be carried out under the Act, including: protection and management of neotropical migratory bird populations; maintenance, management, protection, and restoration of neotropical migratory bird habitat; research and monitoring; law enforcement; and community outreach and education.

The Act authorizes the Secretary of the Interior, who has principal responsibility for implementation, to convene an advisory group consisting of individuals representing public and private organizations actively involved in the conservation of neotropical migratory birds to assist with and provide advice on proposal funding. The Federal Advisory Committee Act provisions do not apply to this advisory group.

Competing for grant funds involves applications from partnerships that describe in substantial detail project locations and other characteristics. The grant program, i.e., competition for funds, for this Act is currently being implemented by the Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, which is publishing and distributing instructional materials that assist the applicants in formulating project proposals for advisory group consideration. The instructional booklets and other instruments, e.g., **Federal Register** notices on request for proposals, are the basis for this information collection request for OMB clearance. Information collected under this program is used to respond to such needs as: Audits, program planning and management, program evaluation, Government Performance and Results Act reporting, Standard Form 424 (Application for Federal Assistance), grant agreements, budget reports and justifications, public and private requests for information, data provided to other programs for database on similar programs, Congressional inquiries and reports required by NMBCA, etc.

In summary, information collection under these programs is required to obtain a benefit, i.e., a cash reimbursable grant that is given competitively to some applicants based on eligibility and relative scale of resource values involved in the projects. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

Frequency of Collection: Occasional. The Neotropical Migratory Bird Conservation Act grant program currently has one project proposal submissions window per year.

Description of Respondents: Households and/or individuals; business and/or other for-profit; not-for-profit institutions; farms; Federal Government; and State, local and/or Tribal governments.

Estimated Completion Time: The reporting burden, or time involved in writing project proposals, is estimated to be 40 hours.

Number of Respondents: It is estimated that approximately 200 proposals will be submitted each year for the Neotropical Migratory Bird Conservation Act grant program.

Dated: April 26, 2002.

Rebecca A. Mullin,

Information Collections, Officer, Fish and Wildlife Service.

[FR Doc. 02–10691 Filed 4–29–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Publication of Award Announcement for Cooperative Agreement With the Student Conservation Association, Inc., for Recruitment and Placement of College-Age and Other Qualified Volunteers to Headquarters, Centers, and Field Stations of the U.S. Geological Survey (USGS)

AGENCY: Department of the Interior, Geological Survey.

ACTION: Notice.

SUMMARY: The USGS announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement to provide recruitment and placement of college-age and other qualified volunteers to accomplish resource management tasks in the areas of biology, water, soil, air, waste, mineral, marine, environmental education, mapping, and geology to centers and field stations of the USGS. The purpose of this program is to provide opportunities to college-age students and other qualified volunteers to obtain experience in support of resource management and research tasks for limited periods on USGS projects. Assistance will be provided only to the Student Conservation Association, Inc. No other applications are solicited. Eligibility is limited to the Student Conservation Association, Inc., because no other known organization recruits and places volunteers with Federal earth science agencies and organizations.

Other qualified organizations that provide recruitment and placement of college-age students and other qualified volunteers are invited to provide an affirmative response to this notice. Response should consist of an organization chart, a brief history, and description of similar volunteer placement activities, including locations and contact information, numbers of volunteers placed, activities, and projects undertaken. Responses must be in writing but may be submitted via e-mail within 2 weeks of publication of this notice to the Business Technical Contact listed below.

No funds will be awarded under this agreement. Funding will be awarded through cooperative project awards based upon requests from headquarters, science centers and field stations for the placement of qualified volunteers. The USGS anticipates awarding this 60-month cooperative agreement on or about May 14, 2002.

ADDRESSES: 1. For program technical assistance contact Nancy Milton, U.S. Geological Survey, Program Review Coordinator, Biological Resources Discipline, MS 301, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone: 703–648–4196, e-mail: *nancy_m_milton@usgs.gov.*

2. For business technical assistance contact Patricia L. Masterson, U.S. Geological Survey, Office of Acquisition and Grants, National Assistance Programs Branch, MS 205G, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone: 703–648–7356, *e-mail pmasters@usgs.gov.*

SUPPLEMENTARY INFORMATION: Authority for this program is found at 43 USC 36c, and 43 USC 50c. The Office of Management and Budget Catalog of Federal Domestic Assistance Number is 15.808.

Dated: April 1, 2002.

Carol F. Aten,

Chief, Office of Administrative Policy and Services.

[FR Doc. 02–10568 Filed 4–29–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee will hold its first meeting. The meeting location is 245 Market Street, 14th floor, San Francisco, California. The Committee is comprised of 10 members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

Topics to be discussed by the Committee include a review of the current status and 5-year plan accomplishments of the U.S. Geological Survey's National Earthquake Hazards Reduction Program. This will include a critique of the accomplishments of the Program over the past 5 years in earthquake hazards assessments, in research on earthquake processes and effects, and in earthquake monitoring and notification.

Meeting of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: May 20, 2002, commencing at 9 a.m. and adjourning at 12 Noon on May 21, 2002.

Contact: Dr. John R. Filson, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6785.

Dated: April 8, 2002.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 02–10567 Filed 4–29–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Texas Section 8(g) Natural Gas Royalty-In-Kind Pilot Report—Evaluation of the 19-Month Period (June 1999–December 2000)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Availability of Natural Gas Royalty-In-Kind Pilot Report for Review and Comment.

SUMMARY: The Minerals Management Service (MMS) will post on MMS's Internet Home Page the *Texas General Land Office/Minerals Management Service 8(g) Gas Royalty-In-Kind (RIK) Pilot—A Report.* Comments will be accepted electronically or in hard copy.

DATES: MMS will consider all comments we receive by June 14, 2002. The Report will be posted on the MMS's Internet home page on April 20, 2002.

ADDRESSES: The Report will be posted on Minerals Revenue Management's

home page at *http://www.mrm.mms.gov* under ''What's New.'' The Report may also be obtained by contacting Mr. Martin C. Grieshaber at the address in the **FURTHER INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For additional information concerning the Report, contact Mr. Martin C. Grieshaber, Minerals Management Service, MS 9200, P.O. Box 25165, Denver, Co 80225–0165; telephone number (303) 275–7118; fax (303) 275–7124; e-mail *Martin.Grieshaber@mms.gov.*

SUPPLEMENTARY INFORMATION: Under the RIK pilot undertaken jointly by the State of Texas General Land Office and the Department of the Interior's Minerals Management Service, gas was sold beginning in June 1999. The pilot included thirteen of the forty leases offshore Texas subject to section 8(g) of the OCS Lands Act. These leases were split into two packages '' the ''Blessing'' and the ''MOPS'' '' for purposes of gas sales. The Report summarizes and analyzes the results of the sales for the first 19 months '' June 1999 through December 2000.

MMS and the State of Texas initiated the 8(g) gas pilot as part of the continuing effort to follow through on the recommendations of the *Royalty-In-Kind Feasibility Study* published by MMS in 1997. Many of the lessons learned during the 8(g) pilot period and subsequent sales have been carried over to the expansion of the gas RIK pilots to the entire Gulf of Mexico (GOM). MMS's intent in making the Report available for comment prior to finalization is to continue an iterative improvement process by receiving comments from individuals and groups with expertise in the GOM gas market.

The internet posting and availability of the Report in hard copy are being announced by a press release as well as in this **Federal Register** notice.

Dated: March 29, 2002.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 02–10544 Filed 4–29–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Kennewick and Columbia Irrigation Districts Pump Exchange Feasibility Study, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement and to conduct public scoping meetings.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) intends to prepare an Environmental Impact Statement (EIS) on the Kennewick and Columbia Irrigation Districts Pump Exchange Feasibility Study, Washington. The purpose of this project is to evaluate opportunities to increase and improve streamflows in the lower Yakima River between the Prosser Diversion Dam and the mouth of the Yakima River during the irrigation season by investigating a water exchange project in the lower portion of the Yakima River or the electrification of the Chandler hydraulic pumps. Alteration of current conditions in this reach could improve spawning and rearing habitat and migration conditions for anadromous fish. Alternatives being considered are partial or full Yakima-Columbia River water exchange, or electrification of the Chandler Pumping Plant. Reclamation is requesting early public comment and agency input to help identify significant issues or other alternatives to be addressed in the EIS.

DATES: Scoping meetings will be held on the following dates and times:

- Kennewick, WA: May 1, 2002, Open Houses 12 pm to 1 pm and 6 pm to 7 pm; Meetings 1 to 3 pm and 7 pm to 9 pm.

Written comments will be accepted through June 3, 2002, for inclusion in the scoping summary document.

The meeting facilities are physically accessible to people with disabilities. Please direct requests for sign language interpretation for the hearing impaired, or other auxiliary aids, to David Kaumheimer by April 17, 2002, at the telephone, fax or TTY relay numbers listed under the **FOR FURTHER INFORMATION** section of this notice.

ADDRESSES: Comments and requests to be added to the mailing list may be submitted to Bureau of Reclamation, Upper Columbia Area Office, Attention: David Kaumheimer, Environmental Programs Manager, 1917 Marsh Road, Yakima, Washington 98907–1749.

The scoping meetings will be held at the following location:

- West Coast Hotel Kennewick, North 1101 Columbia Center Blvd, Kennewick, WA, 99336.

FOR FURTHER INFORMATION CONTACT: David Kaumheimer, Environmental Programs Manager, (509) 575–5848, extension 232, or fax: (509) 454–5611. TTY users may call (509) 575–5848 by dialing 711 to obtain a toll free TTY relay.

SUPPLEMENTARY INFORMATION:

Public Disclosure

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Background

Reclamation has undertaken this study as one potential means to augment instream flow in the lower Yakima River and benefit anadromous fish under the authority of Title XII, Phase 2 of the Yakima River Basin Water Enhancement Project, in Public Law 103–434 (Title XII), which was passed by the Congress on October 31, 1994. Public Law 106–372, which amended Title XII, authorized an engineering feasibility report of the Chandler Pump Exchange, as well as electrifying the pumps at the Chandler Pumping Plant at Prosser Diversion Dam, Washington. Alternatives being considered include either a partial or full Yakima-Columbia River water exchange, or the electrification of the Chandler Pumping Plant.

Water exchange would entail pumping water from the Columbia River near the mouth of the Yakima River into the Kennewick Irrigation District (KID) and Columbia Irrigation District (CID) canals and reducing the amount of water diverted from the Yakima River at the current points of diversion. One of the alternatives being considered is a partial exchange of KID's full Yakima River diversion. It would involve diverting about ⅔ of KID's total 333 cfs diversion from the Columbia River and continuing to divert the remainder at Prosser Dam on the Yakima River. Another alternative is a full exchange which would totally eliminate the diversion of water from the Yakima River to the KID canal. Both alternatives would involve pumping approximately 116 cfs of CID's total existing Yakima

River diversion from the Columbia River.

The alternative of electrification of the Chandler Pumping Plant would involve replacing the existing hydraulic pumps in the pumping plant with electric pumps to pump Yakima River water into KID's main canal at the current point of diversion. The Chandler Pumping Plant is located at the end of the Chandler Canal into which water is diverted at Prosser Dam. Replacing the hydraulic pumps with electric pumps would eliminate the need to divert water at Prosser Dam to drive the hydraulic pumps leaving up to 450 cfs in the 11 mile reach of the Yakima River from Prosser Dam to the Chandler Pumping Plant. No exchange with CID would take place under this alternative.

Public Involvement

Reclamation plans to conduct public scoping meetings to solicit input on the alternatives developed to address stream flows in the lower Yakima River between Prosser Dam and the mouth of the river, and impacts associated with those alternatives. Reclamation will summarize comments received during the scoping meetings and written comments received during the scoping period, identified under **DATES**, into a scoping summary document which will be made available to the public.

Dated: March 21, 2002.

Kenneth R. Pedde,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 02–10524 Filed 4–29–02; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Financial Services Technology Consortium, Inc.

Notice is hereby given that, on March 29, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Financial Services Technology Consortium, Inc. (''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BB&T Corporation, Charlotte, NC; Invidos Corporation, Oakland, CA; Softpro North America, Inc., Newark, DE; and Adhesion Technologies, Fremont, CA have been added as parties to this venture. Also, NYCE, Woodcliff Lake, NJ; and Inetco, Burnaby, British Columbia, CANADA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Financial Services Technology Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On October 21, 1993, Financial Services Technology Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 14, 1993 (58 FR 65399).

The last notification was filed with the Department on December 31, 2001. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 25, 2002 (67 FR 8560).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–10523 Filed 4–29–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on March 23, 2002, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et. seq.* (''the Act''), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, University of California Berkeley, Berkeley, CA; University of Cambridge, Cambridge, Cambridgeshire, United Kingdom; and Learning and Teaching Scotland, Glasgow, Scotland, United Kingdom have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on January 30, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2002 (67 FR 10760).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 02–10522 Filed 4–29–02; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Baggage and Personal Effects of Detained Aliens; Form I–43.

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 1, 2002 at 67 FR 9471, allowing for a 60-day public comment period. One comment was received by the Immigration and Naturalization Service affirming the use of this current information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 30, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–6974. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security

Staff, Attention: Department Clearance Officer, Patrick Henry Building, 601 D Street, NW, Suite 1600, Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Baggage and Personal Effects of Detained Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–43. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form is used by the arresting officer to ensure that the alien is afforded a reasonable opportunity to collect his or her property. The INS also uses this for to protect the government from possible fraudulent claims.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 600,000 responses at one minute (.17) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 25, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–10603 Filed 4–29–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 30-Day Notice of Information Collection under Review; Visa Waiver Nonimmigrant Arrival/Departure Document; Form I–94W.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 1, 2002 at 67 FR 9469, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 30, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Visa Waiver Nonimmigrant Arrival/Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–94W. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by nonimmigrant aliens applying for admission to the United States under the Visa Waiver Pilot Program (section 217 of the Immigration and Nationality Act).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,000,000 responses at 6 minutes (.105) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 420,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally,

comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 25, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–10604 Filed 4–29–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Waiver of Rights, Privileges, Exemptions and Immunities; Form I–508.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. This information collection was previously published in the **Federal Register** on March 1, 2002 at 67 FR 9469, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until; May 30, 2002. This process is conducted in accordance with 5 CFR part 1320.10

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Waiver of Rights, Privileges, Exemptions, and Immunities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–508. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by the Service to determine eligibility of an applicant to retain the status of alien lawfully admitted to the United States for permanent residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,800 responses at 5 (.083) minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 150 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 25, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–10605 Filed 4–29–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection under Review: Guam Visa Waiver Agreement; Form I–760.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 1, 2002 at 67 FR 9468, allowing for a 60-day public comment period. No public comment was received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 30, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer 775—17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Guam Visa Waiver Agreement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–760, Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Public Law 99–396 provides for certain aliens to be exempt from the nonimmigrant visa requirement if seeking entry into and stay on Guam as a visitor under certain conditions. This form is the agreement between carrier of the alien and the United States. Application by aliens is made on another form, the I–736.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 5 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–4391, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Ste. 1600, Washington, DC 20530.

Dated: April 25, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–10606 Filed 4–29–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30–Day Notice of Information Collection under Review: Notice of Appeal of Decision under Section 210 or 245A of the Immigration and Nationality Act; Form I–694.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 1, 2002 at 67 FR 9472, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 30, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Appeal of Decision under Section 210 or 245A of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–694, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This information collection will be used by the INS in considering appeals of denials of temporary and permanent residence status by legalization applicants and special agricultural workers, under sections 210 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,192 responses at 30 minutes (.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 596 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW.,

Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 25, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–10607 Filed 4–29–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition; Form I600

The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 1, 2002 at 67 FR 9472, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until; May 30, 2002. This process is conducted in accordance with 5 CFR part 1320.10

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved information collection.

(2) Title of the Form/Collection: Petition to Classify Orphan as an Immediate Relative and Application for Advance Processing of Orphan Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–600 and I–600A. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by the INS to determine immigrant eligibility and advance processing of orphans.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 34,000 responses at 30 minutes (.5) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 17,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Patrick Henry Building, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: April 23, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–10608 Filed 4–29–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: 30-Day Notice of Information Collection under Review; Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act; Form I–612.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 1, 2002 at 67 FR 9740, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until May 30, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Room 10235, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Waiver of the Foreign Residence Requirement of section 212(e) of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms I–612. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Section 212(e) of the Immigration and Nationality Act provides for a waiver of the foreign residence requirement in certain instances. This information will be used by the INS to determine eligibility for a waiver.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,300 respondents at 20 minutes (.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 432 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, Immigration and Naturalization Service, U.S. Department of Justice, Room 4304, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: April 25, 2002.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 02–10609 Filed 4–29–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day emergency notice of information collection under review: new public safety officer medal of valor application.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by May 8, 2002. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–6466, Washington, DC 20503.

During the first 60 days of this same review period, a regular view of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Tracey Henke, Office of the Assistant Attorney General, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20531, or call (202) 307–5933.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Public Safety Officer Medal of Valor Application.

(3) *The agency form number, if any, and the applicable components of the department sponsoring the collection: Form Number:* OJP Form Number 1121. National Medal of Valor Office, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. Other: Federal Government. The information collected on this application will provide the nomination of public safety officers who demonstrate courage and bravery above and beyond the call of duty without regard for their personal safety. A Medal of Valor Board will be appointed by the Congress and the President. The Board shall select candidates as recipients of the Medal of Valor from among those applications received by the National Medal of Valor Office. Annually, the Board shall present, to the Attorney General, the name or names of those recommended as medal of valor recipients.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 respondents will complete the application in approximately 60 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 500 minutes.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: April 25, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–10612 Filed 4–29–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed collection and comment request.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). PRA95 helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Employment and Training Administration (ETA) is soliciting comments concerning the proposed revised collection of information for the annual grant plan and the annual performance report for Program Year (PY) 2002 Workforce Information Core Products and Services grants. The revision would result in an increased burden to States in the time required to develop and administer the grants.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice. The proposed planning guidance for PY' 2002 Workforce Information Core Products and Services grants can also be accessed at: *http://www.usworkforce.org.*

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 1, 2002.

ADDRESSES: Ms. Gay Gilbert, Chief, Division of USES/ALMIS, Office of Workforce Security, Employment and Training Administration, 200 Constitution Ave., NW., Rm. S–4231, Washington, DC 20210, 202–693–3428 (this is not a toll-free number) or *ggilbert@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 15 of the Wagner-Peyser Act as amended by section 309 of the Workforce Investment Act of 1998 (Public Law 105–220), requires state agencies to consult with customers about the relevance of the information disseminated through the statewide employment statistics system, in order to continuously improve the system. To carry out this requirement and to increase accountability for the expenditure of grant funds for workforce information, ETA is proposing that beginning in PY 2002, a condition for receiving grant funds would be a requirement that States conduct an assessment of customer satisfaction with State produced workforce information products and services and include a summary of the results of the assessment and a description of any actions to be taken to improve the system, in the currently required annual performance report.

States would also be required to provide additional narrative in the annual grant plan, describing the statewide employment statistics system and how the system supports the State's WIA/Wagner-Peyser Five Year Strategic Plan, and a description of the State's planned strategy for assessing customer satisfaction with State produced workforce information.

ETA published its intent to require that future State annual performance reports for these grants include the results of an assessment of customer satisfaction with the State's employment statistics system, in Training and Employment Guidance Letter No. 22–00, dated May 23, 2001, (OMB Control Number 1205–0417).

II. Review and Focus

The Office of Management and Budget is particularly interested in comments which:

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Action

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: PY 2002 Workforce Information Core Products and Services grants.

OMB Number: 1205–0417.

Affected Public: States.

Estimated Respondent Burden Hours:

	Respondents	Responses	Total	Hours	Burden
Annual Plan	54	1	54	65	3,510
Customer Satisfaction	54	1	54	642	34,668
Annual Report	54	1	54	57	3,078
Total	54	3	162	764	41,256

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 25, 2002.

Grace Kilbane,

Administrator, Office of Workforce Security, Labor.

[FR Doc. 02–10640 Filed 4–29–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Quarterly Mine Employment and Coal Production Report

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before July 1, 2002.

ADDRESSES: Send comments to David L. Meyer, Director, Office of Administration and Management, 4015 Wilson Boulevard, Room 615, 4015, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to Meyer-David@msha.gov, along with an original printed copy.

Mr. Meyer can be reached at (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Charlene N. Barnard, Regulatory Specialist, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 725, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Barnard can be reached at *barnard-charlene@msha.gov* (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The reporting and recordkeeping provisions in 30 CFR 50.30(a), Preparation and submission of MSHA Form 7000–2–Quarterly Employment and Coal Production Report is an essential element in MSHA's Congressional mandate to reduce work-related injuries and illnesses among the nation's miners.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Quarterly Mine Employment and Coal Production Report. MSHA is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act Submissions (*http://www.msha.gov/regspwork.htm*)'', or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

MSHA is seeking approval of the existing information collection requirements as required by the Paperwork Reduction Act of 1995, as amended.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Quarterly Employment and Coal Production.

OMB Number: 1219–0006 (MSHA Form 7000–2).

Affected Public: Business or other.

Frequency: Quarterly.

Recordkeeping: 5 years.

Cite/Reference/Form/etc: 30 CFR 50.30.

Total Respondents: 27,618.

Total Responses: 83,819.

Average Time per Response: .58 minutes.

Estimated Total Burden Hours: 48,877.

* Discrepancies due to rounding.

Total Annualized Capital/Startup Costs: 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 24, 2002.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 02–10638 Filed 4–29–02; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Mine Accident, Injury, and Illness Report (30 CFR 50.10; 50.11; and 50.20(a))

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclerance consultations program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [144 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before July 1, 2002.

ADDRESSES: Send comments to David L. Meyer, Director, Office of Administration and Management, 4015 Wilson Boulevard, Room 615, 4015, Arlington, VA 222031984. Commenters are encouraged to send their comments on a computer disk, or via Internet e-mail to *Meyer-David@msha.gov,* along with an original printed copy. Mr. Meyer can be reached at (703) 235–1383 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Charlene N. Barnard, Regulatory Specialist, Records Management Division, U.S. Department of Labor, Mine Safety and Health Administration, Room 725, 4015 Wilson Boulevard, Arlington, VA 2203–1984. Ms. Barnard can be reached at *barnard-charlene@msha.gov* (Internet e-mail), (703) 235–1470 (voice) or (703) 235–1563 (fascimile).

SUPPLEMENTARY INFORMATION:

I. Background

The reporting and recordkeeping provisions in 30 CFR Subpart C—Reporting of Accidents, Injuries, and Illnesses are essential elements in MSHA's mandate to reduce work-related injuries and illnesses among the nation's miners. 30 CFR 50.10 requires that mine operators and contractors immediately notify MSHA of an accident; 30 CFR 50.11 requires that each accident and injury be investigated and a report prepared; 30 CFR 50.29(a) requires mine operators and contractors to report each incident on MSHA Form 7000–1 within 10 days of accident of injury.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Mine Accident, Injury, and Illness Report (MSHA Form 7000–1). MSHA is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* Enhance the quality, utility, and clarity of the information to be collected; and
* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed accessing the MSHA Home Page (*http://www.msha.gov*) and selecting ''Statutory and Regulatory Information'' then ''Paperwork Reduction Act Submissions (*http://www.msha.gov/regspwork.htm*)'', or by contracting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

The information gathered from this collection is used to establish files of injury and employment date in order to measure the levels of injury experience and identify those areas most in need of improvement.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Mine Accident, Injury, and Illness Report (MSHA Form 7000–1).

OMB Number: 1219–0007.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Record keeping: 5 years.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden hours*
50.10	27,618	On occasion	1,872	0.50	937
50.11	27,618	On occasion	34,238	9	294,228
50.20	27,618	On occasion	29,309	.44	12,852
Data mailers	27,618	On occasion	27,866	.25	6,967
Total	27,618		65,419	5	314,984

* Discrepancies due to rounding.

Total Annualized Capital/Startup Costs: $0.

Total Operating and Maintenance Costs: $15,926.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 24, 2002.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 02–10639 Filed 4–29–02; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0110(2002)]

Consultation Agreements (29 CFR Part 1908); Revision of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comments.

SUMMARY: OSHA solicits comments concerning its proposal to revise the total burden hour estimates for, and to extend OMB approval of, information-collection requirements specified by the Consultation Agreements and Procedures at 29 CFR Part 1908. The Consultation Agreements establish the requirements for cooperative agreements with the states, under which the states [1] receive funds from OSHA to provide free Occupational Safety and Health consultation services to employers. The rule also establishes procedures governing the provision of services, and the obligations of employers receiving the consultation service.

DATES: Submit written comments on or before July 1, 2002.

[1] As used in this notice, States include the District of Columbia and the territories receiving federal funds for delivery services under section 21(d) of the Occupational Safety and Health (Compliance Assistance Authorization) Act of 1998.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0110(2002), OSHA, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350. Commenters may transmit written comments of 10 pages or less by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Francis Yebesi, Directorate of Federal-State Operations, OSHA, U.S. Department of Labor, Room N–3700, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2213. A copy of the Agency's Information-Collection Request (ICR) supporting the need for information collection specified in the Consultation Agreements is available for inspection and copying in the Docket Office, or by requesting a copy from Francis Yebesi at (202) 693–2213. For electronic copies of the ICR contact OSHA on the internet at *http://www.osha.gov/comp-links.html,* and select ''Information Collection Requests.''

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e. the states and employers) burden, conducts pre-clearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). The program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational accidents. (29 U.S.C. 657.) The Occupational Safety and Health Compliance Assistance Authorization Act (CAAA) of 1998 requires the Secretary of Labor to establish and support cooperative agreements with the States under which the states will provide occupational safety and health consultation services to employers. The CAAA requires that onsite consultations conducted pursuant to such agreements include a provision for participation by employees. It also requires the states to ensure that; hazards are corrected in a timely manner, that uncorrected imminent danger situations and serious hazards are reported to appropriate enforcement authorities, and that employers meeting certain requirements are granted inspection exemption, that the consultation service is only delivered at the request of the employer and that priority in scheduling is given to small businesses in higher hazard industries.

The information-collection requirements in the Consultation Agreements Rule of 1908 provides OSHA with the tools to monitor compliance with the requirements of the Act and the CAAA and for measuring and evaluating the success of the program. It is also the basis for reporting to Congress in compliance with Government Performance Results Acts requirements.

H. Special Issues for Comment

OSHA has particular interest in comments on the following issues:

- Whether the information-collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OHSA's estimate of the burden (time and cost) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on the states and employers who provide information, for example, by using automated, or other technological information-collection and -transmission techniques.

III. Proposed Actions

OSHA is requesting to increase the existing burden-hour estimate for, and to extend OMB approval of, the collection-of-information requirements specified by the Rule. In this regard, the Agency is requesting an increase in the current burden hour estimate from 11,905 hours to 17,535 hours, a total increase of 5,630 hours. Based on a recent innovation that allows the capturing of attributes of excellence in safety and health management systems, state consultants are now required to enter information on a web-based safety and health program assessment worksheet. The completion of this worksheet accounts for the increase in burden hours. OSHA will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend its approval of these information-collection requirements.

Type of Review: Extension of currently approved information-collection requirements.

Title: Consultation Agreements.

OMB Number: 1218–0110.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State governments.

Number of Respondents: 27,000.

Frequency: On occasion.

Average Time Per Response: Varies from approximately 5 minutes for a consultant to compose a ''List of Hazards'' to 32 hours (annually) for the State to compile and compose information for the cooperative agreement.

Estimated Total Burden Hours: 17,535 hours.

Estimated Cost (Operation and Maintenance): $0.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 3–200 (65 FR 50017).

Dated: Signed at Washington, DC on April 25, 2002.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 02–10641 Filed 4–29–02; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Quality Guidelines; Request for Comment

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of draft guidelines; request for comment.

SUMMARY: NARA is seeking public comment on the draft Information Quality Guidelines. The Guidelines contain NARA's standards of quality, utility, objectivity, and integrity for information that is disseminated to the public, and the administrative procedures for preparing, reviewing, and correcting information products. The Guidelines also describe the mechanisms for the public to request correction of information, and to request reconsideration of a NARA decision to deny a request for correction. NARA will consider public comments in developing the final Information Quality Guidelines.

The report is available electronically at *http://www.nara.gov/nara/*

pubcom.html. For a paper copy of the report, contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

DATES: Comments must be received by May 31, 2002.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–837–0312. You may also send your comments to *comments@NARA.GOV.* Please include ''Attn: Info Quality'' in the subject line and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the Regulation Comments desk at 301–837–1948.

FOR FURTHER INFORMATION CONTACT: John Martinez at 301–837–1948.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) issued Government-wide guidelines under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106554) to ensure and maximize the quality, objectivity, utility and integrity of information disseminated by Federal agencies. Each Federal agency is responsible for issuing its own section 515 guidelines. Subsequently, the National Archives and Records Administration (NARA) has developed corresponding information quality guidelines.

Dated: April 24, 2002.

Nancy Allard,

Federal Register Liaison.

[FR Doc. 02–10587 Filed 4–29–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL COUNCIL ON DISABILITY

Advisory Committee Meeting/ Teleconference

AGENCY: National Council on Disability (NCD).

Time and Date: 4 p.m. EST, May 8, 2002.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Status: All parts of this meeting (conference call) will be open to the public. Those interested in participating in the conference call should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available.

Matters To Be Considered: Roll call, announcements, reports, new business, adjournment.

CONTACT PERSON FOR MORE INFORMATION: Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

Youth Advisory Committee Mission: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: April 17, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–10525 Filed 4–29–02; 8:45 am]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 313, ''Application for Material License''; and NRC Form 313A, ''Training and Experience and Preceptor Statement.''

2. *Current OMB approval number:* 3150–0120.

3. *How often the collection is required:* There is a one-time submittal of information to receive a license. Once a specific license has been issued, there is a 10-year resubmittal of the information for renewal of the license.

4. *Who is required or asked to report:* All applicants requesting a license for byproduct or source material.

5. *The number of annual respondents:* 13,154 (3,743 NRC licensees + 9,357 Agreement State licensees + 54 new modalities).

6. *The number of hours needed annually to complete the requirement or request:* 92,672 (26,201 hours for NRC licensees and 65,449 hours for Agreement State licensees and 972 hours for new modalities).

7. *Abstract:* Applicants must submit NRC Form 313 and 313A to obtain a specific license to possess, use, or distribute byproduct or source material. The information is reviewed by the NRC to determine whether the applicant is qualified by training and experience, and has equipment, facilities, and procedures which are adequate to protect the public health and safety of the public, and minimize danger to life or property.

Submit, by July 1, 2001, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide web site (*http://www.nrc.gov/public-involve/doc-comment/omb/index.html*). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail to *infocollects@nrc.gov/.*

Dated at Rockville, Maryland, this 23rd day of April , 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–10592 Filed 4–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR part 75—Safeguards on Nuclear Material, Implementation of US/IAEA Agreement.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Installation information is submitted upon written notification from the Commission. Changes are submitted as they occur.

Nuclear material accounting and control information is submitted in accordance with specified instructions.

5. *Who will be required or asked to report:* All persons licensed or certified by the Commission or Agreement States to possess source or special nuclear material at an installation specified on the U. S. eligible list as determined by the Secretary of State or his designee and filed with the Commission, as well as holders of construction permits and persons who intend to receive source material.

6. *An estimate of the number of responses:* 7 (1 response and 6 recordkeepers)

7. *The estimated number of annual respondents:* 6. One reporting and recordkeeping and five others recordkeeping only. The NRC-licensed facility selected for inspection will be reporting design information. This facility and the five facilities selected pursuant to a separate protocol will maintain transfer and material balance records, but reporting to the IAEA will be through the Nuclear Materials Management and Safeguards System.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 2,400 (.2 hours for reporting and 2,400 hours for recordkeeping).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 75 establishes a system of nuclear material accounting and control to implement the agreement between the United States and the International Atomic Energy Agency (IAEA). Under that agreement, NRC is required to collect the information and make it available to the IAEA. Currently, the IAEA has selected and is inspecting one NRC-licensed facility pursuant to 10 CFR 75.41.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/OMB/index/html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 30, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 17th day of April 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–10590 Filed 4–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 20—Standards for Protection Against Radiation

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Annually for most reports and at license termination for reports dealing with decommissioning.

5. *Who will be required or asked to report:* NRC licensees, including those requesting license termination.

6. *An estimate of the number of responses:* 5,733 (685 responses + 5,048 recordkeepers).

7. *The number of annual respondents:* 5,048.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 322,851 hours (319,008 recordkeeping + 3,843 reporting).

9. *An indication of whether Section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR part 20 establishes standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the NRC. These standards require the establishment of radiation protection programs, maintenance of radiation records, recording of radiation received by workers, reporting of incidents which could cause exposure to radiation, submittal of an annual report to NRC of the results of individual monitoring, and submittal of license termination information. These mandatory requirements are needed to protect occupationally exposed individuals from undue risks of excessive exposure to ionizing radiation and to protect the health and safety of the public.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: http://www.nrc.gov/public-involve/doc-comment/OMB/index/html. The document will be available on

the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 30, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0158), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 23rd day of April 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–10591 Filed 4–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–368]

Entergy Operations, Inc.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 244 to Facility Operating License No. NPF–6 issued to Entergy Operations, Inc. (the licensee), which revised the Operating License and Technical Specifications (TSs) for operation of Arkansas Nuclear One, Unit 2, located in Pope County, Arkansas. The amendment is effective as of the date of issuance.

The amendment modified the Operating License and the TSs to allow an increase in the maximum authorized reactor core power level from 2815 megawatts thermal (MWt) to 3026 MWt, which represents a power increase of about 7.5 percent and is considered to be an extended power uprate. Also, operation at the uprated power requested by the proposed amendment resulted in increases in dose consequences for certain postulated accidents considered in the accident analyses in the Safety Analysis Report; however, the doses remained within the regulatory limits. In addition, although unrelated to the proposed power uprate, the proposed amendment clarified portions of the control element assembly TSs.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on December 27, 2001 (66 FR 66945). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (67 FR 20176, published April 24, 2002).

Further details with respect to the action see (1) the application for amendment dated December 19, 2000, as supplemented by letters dated May 30, June 20, 26 (two letters), 27, and 28, July 3 and 24 (two letters), August 7, 13, 21, 23, and 30, September 14, October 1, 12 (two letters), 17, 30 (two letters), and 31, November 9, 16 (three letters), and 17, and December 5, 6 (two letters), 10, and 20, 2001, and January 14, 15, and 31, February 7 (two letters), and March 1, 2002, (2) Amendment No. 244 to License No. NFP–6, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contract the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 24th day of April 2002.

For the Nuclear Regulatory Commission.

Thomas W. Alexion,

Project Directorate IV, Project Manager, Section 1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–10589 Filed 4–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 5, 2002 through April 18, 2002. The last biweekly notice was published on April 16, 2002 (67 FR 18641).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By May 30, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov.*

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2 (HBRSEP2), Darlington County, South Carolina

Date of amendment request: February 21, 2002.

Description of amendment request: The proposed amendment to the Technical Specifications for HBRSEP2 will modify the containment vessel spray nozzle testing frequency specified in the Surveillance Requirement 3.6.6.8 from ''10 years'' to ''following activities which could result in nozzle blockage.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change revises the Surveillance frequency from once per ['']10 years[''] to ['']following activities [which] could result in nozzle blockage.[''] The Containment Spray System is not considered as an initiator of any analyzed accident. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed accident. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. As a result, the probability of any accident previously evaluated is not significantly increased.

The proposed change revises the Surveillance frequency. Reduced testing is acceptable where operating experience has shown that components routinely pass the Surveillance when performed at the specified interval. The system design and construction materials provide assurance that the production of significant corrosion products is unlikely. Since activities that could introduce foreign material are the most likely cause for obstruction, testing or inspection following such an activity would verify that the nozzles are unobstructed and capable of performing their safety function. Such events would necessarily involve a substantive breakdown in foreign material controls during such activities. As a result, the consequences of any accident previously evaluated are not significantly affected.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change to the test frequency for the Containment Spray System nozzles does not involve the use or installation of new equipment. Currently installed equipment is not operated in a new or different manner. No new or different system interactions are created, and no new processes are introduced.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The margin between containment pressure response and containment design pressure will not be affected because the design and functioning of the Containment Spray System is unchanged. Since the system is not susceptible to corrosion induced obstruction, nor is the introduction of foreign material from the exterior likely, the proposed surveillance frequency is sufficient to provide high confidence that the Containment Spray System will be available to provide the flow necessary in the event that the safety function is required. Therefore, the capacity of the system will remain unchanged.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Thomas Koshy, Acting.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: March 13, 2002.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for H. B. Robinson Steam Electric Plant (HBRSEP), Unit No. 2, to permit selective implementation of an alternative source term (AST). The proposed amendment would modify the TS requirements for movement of irradiated fuel and performing core alterations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Implementation of the Alternative Source Term does not affect the design or operation of HBRSEP, Unit No. 2; rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequences of the postulated accident. A review of the HBRSEP, Unit No. 2, Updated Final Safety Analysis Report (UFSAR) shows that the components and systems affected by the proposed changes are not initiators of any previously analyzed accident. Therefore, there is no significant increase in the probability of any previously analyzed accident.

The implementation of the Alternative Source Term has been evaluated in a revision to the HBRSEP, Unit No. 2, Fuel Handling Accident. Based on the results of this analysis, it has been demonstrated that, with the requested changes to the Technical Specifications, the dose consequences of a postulated Fuel Handling Accident are within the regulatory guidance provided by the NRC for use with the Alternative Source Term. This guidance is presented in 10 CFR 50.67 and Regulatory Guide 1.183. Since automatic actuation of the control room emergency filtration system, automatic actuation of containment ventilation isolation, containment penetration operability, and the containment purge filter system are not credited in the revised analysis for the Fuel Handling Accident, eliminating these requirements during the movement of irradiated fuel assemblies will not result in a significant increase in the consequences of any previously evaluated accident. In addition, a review of the HBRSEP, Unit No. 2, UFSAR shows that the only accident resulting in dose consequences that is postulated to occur during core alterations is the Fuel Handling Accident. Therefore, the Applicability changes associated with core alterations will not result in a significant increase in the consequences of any previously evaluated accident.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed changes are supported by the revised design basis Fuel Handling Accident analysis. The proposed changes do not

introduce any new modes of plant operation and do not involve physical modifications to the plant.

Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed changes are associated with the implementation of a new licensing basis for HBRSEP, Unit No. 2. The new licensing basis implements an Alternative Source Term in accordance with 10 CFR 50.67 and the associated Regulatory Guide 1.183. The results of the revised Fuel Handling Accident analysis, revised in support of this submittal, are subject to revised acceptance criteria. This analysis has been performed using conservative methodologies in accordance with the regulatory guidance. The dose consequences of the limiting Fuel Handling Accident are within the acceptance criteria also found in the regulatory guidance associated with Alternative Source Terms.

The proposed changes continue to ensure that doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits. Specifically, the margin of safety for this accident is considered to be that provided by meeting the applicable regulatory limits, which are conservatively set below the 10 CFR 50.67 limits. With respect to control room personnel doses, the margin of safety (the difference between the 10 CFR 50.67 limits and the regulatory limits defined by 10 CFR 50, Appendix A, Criterion 19 (GDC–19)) continues to be satisfied.

Therefore, because the proposed changes continue to result in dose consequences within the applicable regulatory limits, they do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Thomas Koshy, Acting

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: March 26, 2002

Description of amendment request: The proposed amendments would modify the Technical Specifications definitions for Engineered Safety Feature Response Time and Reactor Trip System Response Time to provide for verification of response time for selected instruments provided that the instruments and methodology for verification have been previously reviewed and approved by the staff.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment to the Technical Specifications does not result in the alteration of the design, material, or construction standards that were applicable prior to the change. The same reactor trip system (RTS) and engineered safety features actuation system (ESFAS) instrumentation is used, and the response time allocation/modeling assumptions in UFSAR [updated final safety analysis report] Chapter 15 analysis remain unchanged. Only the methodology of time response verification is changed. The proposed change will not result in the modification of any system interface that would increase the likelihood of an accident since these events are independent of the proposed change. The proposed amendment will not change, degrade, or prevent actions, or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the UFSAR. Therefore, the proposed amendment does not result in the increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. This change does not alter the performance of the reactor protection system (RPS) or ESFAS systems. All RPS and ESFAS channels will still have response time verified by test before placing the channel in operational service and after any maintenance that could affect response time. Changing the method of periodically verifying instrument response for certain RPS and ESFAS channels (assuring equipment operability) from time response testing to calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the channel characteristic. Implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

No. This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method is modified to allow for the use of actual test or engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis, since calibration tests will detect any degradation which might significantly affect channel response time. Based on the above, it is concluded that the proposed license amendment request does not result in a reduction in margin with respect to plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: March 20, 2002

Description of amendment request: The proposed amendment revises the reporting requirements specified in Section 2.E of the Facility Operating License and Technical Specification Section 5.6.4 by eliminating requirements that provide the U.S. Nuclear Regulatory Commission (NRC) with information that is not risk significant, and changes the reporting time period to be consistent with Section 50.73 of Title 10 of the Code of Federal Regulations (10 CFR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

These changes involve administrative requirements only. The plant's design basis and the Updated Safety Analysis Report accident analysis are not affected. In addition, none of these reporting requirements support the plant's emergency plan. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change deletes non-risk significant reporting requirements and does not affect plant design or operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change only impacts administrative reporting requirements. It does not impact the design or operation of any plant system, structure, or component. In addition, no Technical Specification Safety Limit or instrument allowable value are affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005

NRC Section Chief: Robert A. Gramm

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 13, 2002

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714).

The licensee affirmed the applicability of the following NSHC determination in its application dated March 13, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: March 13, 2002.

Description of amendment request: The proposed amendment would correct several errors that were found subsequent to Nuclear Regulatory Commission (NRC) issuance of Amendment 215, which converted the Technical Specifications (TSs) for Arkansas Nuclear One, Unit 1 (ANO–1), to Improved TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The non-administrative proposed changes describe required actions to be taken upon loss of required electrical equipment, the number of non-licensed operators required on-site in Modes 1, 2, 3, and 4, the limitations on radiological effluent releases, and a clarification of automatic isolation capabilities when the control room is operating in the emergency recirculation

mode. The proposed changes are not considered accident initiators nor do they result in a change to the physical characteristics of plant equipment. The proposed changes act to provide reasonable response to lost equipment, defense in depth, limitations on radiological release, and placing equipment in a fail-safe condition and do not adversely affect the accident analysis.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The non-administrative proposed changes describe required actions to be taken upon loss of required electrical equipment, the number of non-licensed operators required on-site in Modes 1, 2, 3, and 4, the limitations on radiological effluent releases, and a clarification of automatic isolation capabilities when the control room is operating in the emergency recirculation mode. None of the proposed changes can initiate any type of accident in and by themselves. The proposed changes act only to provide reasonable response to lost equipment, defense in depth, limitations on radiological release, and placing equipment in a fail-safe condition.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The aforementioned non-administrative proposed changes do not significantly impact the margin of safety. The proposed required action to be performed upon loss of a required inverter in Modes 5 and 6 provides a possible alternative to suspending fuel movement by taking conservative action to identify and declare inoperable, all equipment affected by the loss of the required inverter. These actions may in turn, require suspension of refueling activities, but in any event act to ensure the unit is maintained in a safe shutdown condition.

The increase in the number of required non-licensed operators on-site in Modes 1, 2, 3, and 4 is conservative and acts to improve the margin to safety by expanding the station's defense in depth.

Complying with the radiological effluent release limitations as set forth in 10 CFR [part] 20 (prior to revision) provides acceptable assurance that the health and safety of the public will be maintained. ANO–1 current complies with this version of 10 CFR [part] 20.

Finally, the proposed Bases change for the CREVS clarifies that automatic isolation signals and devices are not required when the control room is already isolated and operating in the emergency recirc[ulation] mode of operation. When in this configuration, the control room habitability system meets the safety function for which it was designed. Thus, this clarification does not affect the margin to safety.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: February 19, 2002.

Description of amendment request: Entergy Operations, Inc. (EOI) requests a license amendment for the Grand Gulf Nuclear Station, Unit 1. EOI proposes to amend Technical Specification (TS) 3.8.1, ''AC [Alternating Current] Sources—Operating'' to remove the reactor operational MODE restrictions for testing the High Pressure Core Spray (HPCS) Diesel Generator 13 (DG 13). The proposed change would remove the restriction associated with surveillance requirements (SRs) that prohibit performing the required DG 13 testing while the plant is in reactor operation MODES 1, 2, or 3. This TS change would allow the performance of all SRs for DG 13 during any MODE of plant operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The HPCS DG and its associated emergency loads are accident mitigating features, not accident initiating equipment. Therefore, there will be no impact on any accident probabilities by the approval of the requested amendment.

The design of plant equipment is not being modified by these proposed changes. As such, the ability of the DG to respond to a design basis accident will not be adversely impacted by these proposed changes. The capability of the DG to supply power in a timely manner will not be compromised by permitting performance of DG testing during periods of power operation. Additionally, limiting testing to only one DG at a time ensures that design basis requirement for backup power is met, should a fault occur on the tested DG. Therefore, there would be no significant impact on any accident consequences.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident causal mechanisms would be created as a result of NRC [U.S. Nuclear Regulatory Commission] approval of this amendment request since no changes are being made to the plant that would introduce any new accident causal mechanisms. Equipment will be operated in the same configuration with the exception of the plant MODE in which the testing is currently conducted. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes to the testing requirements for the HPCS DG do not affect the operability requirements for the DG, as verification of such operability will continue to be performed as required. Continued verification of operability supports the capability of the DG to perform its required function of providing emergency power to plant equipment that supports or constitutes the fission product barriers. Consequently, the performance of these fission product barriers will not be impacted by implementation of this proposed amendment.

In addition, the proposed changes involve no changes to setpoints or limits established or assumed by the accident analysis. On this and the above basis, no safety margins will be impacted.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn,

1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: February 25, 2002.

Description of amendment request: Entergy Operations, Inc. (EOI) requests modification of the Grand Gulf Nuclear Station, Unit 1 Technical Specifications (TS) to add a new Special Operations Limiting Condition for Operation (LCO) (Suppression Pool Makeup—MODE 3). The new TS provision would allow installation of the Upper Containment Pool (UCP) reactor cavity gates, and draining the reactor cavity pool portion of the UCP while still in reactor operation MODE 3, ''Hot Shutdown,'' with the reactor pressure less than 230 pounds per square inch gauge. EOI also requests modification to the applicability of the UCP gates surveillance requirement, TS 3.6.2.4, ''Suppression Pool Makeup (SPMU) System,'' to allow installation of the UCP gates in reactor operation MODE 1, ''Power Operation,'' MODE 2, ''Startup,'' or MODE 3, ''Hot Shutdown.'' The proposed changes would allow earlier installation of the UPC gates, and allow draining of the reactor cavity pool portion of the UCP while holding the plant in MODE 3 to facilitate an earlier start of certain refueling outage work evolutions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes revise the required water levels in the UCP and suppression pool. The probability of an accident previously evaluated is unrelated to the water levels in the pools since they are mitigative systems. The operation or failure of a mitigative system does not contribute to the occurrence of an accident. No active or passive failure mechanisms that could lead to an accident are affected by these proposed changes.

The consequences of a previously evaluated accident are not significantly increased. The changes have no impact on the ability of any of the Emergency Core Cooling Systems (ECCS) to function adequately, since adequate net positive suction head (NPSH) is provided. The post-accident Containment temperature is not significantly affected by the proposed reduction in total heat sink volume. The increase in suppression pool water level to compensate for the reduction in UCP volume will provide reasonable assurance that the minimum post-accident vent coverage is adequate to assure the pressure suppression function of the suppression pool is accomplished. The suppression pool water level will be raised above the current high water limit for the proposed Special Operations LCO only after the reactor pressure has been reduced sufficiently to assure that the hydrodynamic loads from a loss of coolant accident will not exceed the design values. The reduced reactor pressure will also ensure that the loads due to main steam safety relief valve actuation with an elevated pool level are within the design loads. The reduced post-LOCA [loss of coolant accident] Containment pressure ensures that post-accident dose consequences with no fission product scrubbing by Containment Spray (CS) is bounded by the DBA [design basis accident] LOCA.

Therefore, the proposed changes do not significantly increase the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes to the water level requirements for the UCP and the suppression pool do not involve the use or installation of new equipment. Installed equipment is not operated in a new or different manner. No new or different system interactions are created, and no new processes are introduced. The increased suppression pool water level does not increase the probability of flooding in the Drywell. No new failures have been created by the change in the water level requirements.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes to the UCP and suppression pool water levels do not introduce any new setpoints at which protective or mitigative actions are initiated. No current setpoints are altered by this change. The design and functioning of the Containment pressure suppression system is unchanged. The proposed total water volume is sufficient to provide high confidence that the pressure suppression and Containment systems will be capable of mitigating large and small break accidents. All analyzed transient results remain well within the design values for the structures and equipment. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Beaver County, Pennsylvania

Date of amendment request: March 14, 2002.

Description of amendment request: The amendments would revise the Technical Specifications (TSs) by extending the allowed outage time (AOT), or completion time, associated with an inoperable Emergency Core Cooling System accumulator. The proposed changes are based on the methodology described in Topical Report WCAP–15049-A, ''Risk-Informed Evaluation of an Extension to Accumulator Completion Times,'' Revision 1. In addition to the AOT extension, other changes would be incorporated to make the ''Emergency Core Cooling Systems'' TSs consistent with NUREG–1431, ''Standard Technical Specifications—Westinghouse Plants.'' Format and editorial changes are included as necessary to facilitate the revision of the TS text to conform to the current TS page format.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes consist of extending allowed outage times for required accumulator Technical Specification actions, elimination of alarm surveillance requirements associated with the accumulators, verifying boron concentration and editorial changes. These changes are independent of the probability or consequences of accidents previously evaluated in either of the Beaver Valley Power Station (BVPS) Updated Final Safety Analysis Reports (UFSARs). Since the accumulators are not accident initiators, they do not affect the probability of accidents. An NRC [Nuclear Regulatory Commission] approved generic analysis for Westinghouse plants, which is applicable to BVPS, concludes that extending the accumulator allowed outage time for reasons other than boron concentration out of limit is acceptable

because the impact of core damage frequency has been shown to be within acceptable limits. The extension to the allowed outage time for boron not being within limits is consistent with NUREG–1431 and acceptable because the boron is not assumed in the injection phase of a loss of coolant accident (LOCA).

The accumulators, however, do perform an accident mitigation function. Their mitigation function is also not affected by the proposed changes since none of the associated accident mitigation parameters are changed. The accumulator volume available for injection remains the same as before the proposed changes, as does the boron concentration of the contained water. The accumulator valve position requirement to be open with its power removed, and the nitrogen cover pressure limit are also not changed by this request. As a result the same amount of water, at the same boron concentration, will be injected into the Reactor Coolant System (RCS) in the same amount of time after the proposed changes are made as it was before the proposed changes. Due to the fact that the accident mitigation function of the accumulators is not affected by the proposed changes, the consequences of an accident previously evaluated is also not changed.

Since the duration of the allowed outage times is not an input into the safety analysis (i.e., the safety analysis assumes that all of the accumulators are operable), the extension of the allowed outage times has no impact on the safety analysis. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. Extending allowed outage times for required Technical Specification actions and eliminating alarm surveillance requirements associated with the accumulators would not affect the operation or maintenance of the accumulators. The accumulators will not be operating in any different manner following the proposed changes than they were before the proposed changes are made. They will not be subjected to any new environmental conditions or operational modes, or placed into any new configurations that could lead to any new failure mechanisms. The role of the accumulators following a LOCA is not altered by adopting the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for BVPS.

3. Does the change involve a significant reduction in a margin of safety?

No. The proposed changes do not involve any changes to accumulator parameters utilized in the accident analysis. There are no changes being made to the accumulator's water volume, boron concentration, nitrogen cover pressure or the position of the isolation valve. As a result, the assumptions made regarding the performance of the accumulators during an accident are unchanged. An NRC approved generic analysis for Westinghouse plants concludes that extending the accumulator allowed outage time for reasons other than boron concentration out of limit is acceptable because the impact on core damage frequency has been shown to be within acceptable limits. A plant specific risk assessment confirms that this generic analysis is applicable to BVPS. The extension to the allowed outage time for boron not being within limits is consistent with NUREG–1431 and acceptable because the boron is not assumed in the injection phase of a LOCA. Therefore, the proposed changes do not involve a significant reduction in a margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary O'Reilly, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Richard J. Laufer.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: March 27, 2002.

Description of amendment request: The licensee proposed to revise Section 3.6.3, ''Emergency Power Sources,'' of the Technical Specifications to extend the allowed outage time (AOT) for an inoperable diesel generator (DG) from the current 7 days to 14 days. In addition, Section 3.4.4, ''Emergency Ventilation System,'' and 3.4.5, ''Control Room Air Treatment System,'' would be revised to delete the Limiting Condition for Operation (LCO) that the DGs associated with operation of these systems be operable at all times.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis and has performed its own, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated.

No. The proposed amendment only affects the AOT for the DGs, and LCO for the emergency ventilation and control room air treatment systems. There will be no associated changes to the design, operational characteristics, function, or reliability of these systems.

These systems were designed to mitigate the consequences of various previously evaluated accidents and, as such, are not postulated to cause such accidents. Thus, the proposed amendment does not affect the safety function of these systems nor the credits given to these systems for mitigating accident consequences. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment does not affect accident initiators or precursors because it does not alter any design parameter, condition, equipment configuration, or manner in which the affected systems are operated. Further, it does not alter or prevent the ability of structures, systems, or components to perform their intended safety or accident mitigating functions. Accordingly, the proposed amendment does not create a new or different kind of accident from any accident previously evaluated.

3. Does the amendment involve a significant reduction in a margin of safety?

No. The proposed amendment does not change any design parameter, analysis methodology, safety limits or acceptance criteria. The revised requirements will continue to ensure reliability and operability of the affected systems. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Joel Munday, Acting.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: March 28, 2002

Description of amendment request: The proposed amendment would change Technical Specification 3.0.3 to allow a longer period of time to perform a missed surveillance. The time would be extended from the current limit of ''* * * up to 24 hours or up to the limit

of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to the specification: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated March 28, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Alvin Gutterman, Morgan Lewis, 1111 Pennsylvania Avenue NW., Washington, DC 20004.

NRC Section Chief: L. Raghavan

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: March 29, 2002

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to change TS Section 5.5.12, ''Primary Containment Leakage Rate Testing Program,'' to reflect a one-time deferral of the Type A Containment Integrated Leak Rate Test (ILRT) to no later than September 2008. This would represent a one-time extension of the ILRT interval from 10 years to 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision to the Technical Specifications involves a one-time extension to the current interval for Type A containment testing. The current test interval of ten (10) years would be extended on a one-time basis to no longer than fifteen (15) years from the last Type A test. The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The reactor containment is designed to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such the reactor containment itself and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident.

Therefore, the proposed Technical Specification change does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of the evaluated accidents are the amount of radioactivity that is released to secondary containment and subsequently to the public.

The proposed change involves only the extension of the interval between Type A containment leakage tests. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications. Industry experience has shown, as documented in NUREG–1493, that Type B and C containment leakage tests have identified a very large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is very small. The DAEC [Duane Arnold Energy Center] ILRT test history supports this conclusion. NUREG–1493, Performance-Based Containment Leak-Test Program, concluded, in part, that reducing the frequency of Type A containment leak tests to once per twenty (20) years leads to an imperceptible increase in risk. The integrity of the reactor containment is subject to two types of failure mechanisms which can be categorized as (1) activity based and (2) time based. Activity based failure mechanisms are defined as degradation due to system and/or component modifications or maintenance. Local leak rate test requirements and administrative controls such as design change control and procedural requirements for system restoration ensure that

containment integrity is not degraded by plant modifications or maintenance activities. The design and construction requirements of the reactor containment itself combined with containment inspections performed in accordance with ASME Section XI, the Maintenance Rule and the DAEC's response to NRC Generic Letter 98–04 (''Potential for Degradation of the Emergency Core Cooling System (ECCS) and Containment Spray System (CSS) after a Loss-of-Coolant Accident (LOCA) because of Construction and Protective Coating Deficiencies and Foreign Material in Containment'') serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing, thus maintaining containment leakage low. Additionally, the on-line containment monitoring capability that is inherent to inerted BWR containments allows for the detection of gross containment leakage that may develop during power operation.

Therefore, the proposed Technical Specification change does not involve a significant increase in the consequences of an accident previously evaluated.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision to the Technical Specifications involves a one-time extension to the current interval for Type A containment testing. Primary containment is designed to contain energy and fission products during and after an event. The reactor containment and the testing requirements invoked to periodically demonstrate the integrity of the reactor containment exist to ensure the plant's ability to mitigate the consequences of an accident and do not involve the prevention or identification of any precursors of an accident. Revision to the Type A test interval does not change the events that could lead to containment failure. There are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure mode creating an accident.

Therefore, the proposed Technical Specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed amendment will not involve a significant reduction in a margin of safety.

The proposed Technical Specification change does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The proposed change involves only the extension of the interval between Type A containment leakage tests. The current interval of 10 years, based on past performance, would be extended on a one-time basis to 15 years from the last Type A test. Type B and C containment leakage tests will continue to be performed at the frequency currently required by plant Technical Specifications.

The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year interval in Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1% to the individual risk and that increasing the Type A test interval would have minimal affect on this risk since about 95% of the potential leakage paths are detected by Type B and Type C testing. The DAEC and industry experience strongly supports the conclusion that Type B and C testing detects a large percentage of containment leakage paths and that the percentage of containment leakage paths that are detected only by Type A testing is small. The containment inspections performed in accordance with ASME Section XI, the Maintenance Rule and the DAEC's response to NRC Generic Letter 98–04 serve to provide a high degree of assurance that the containment will not degrade in a manner that is detectable only by Type A testing.

The specific requirements and conditions of the Primary Containment Leakage Rate Testing Program, as defined in Technical Specifications, exist to ensure that the degree of reactor containment structural integrity and leak-tightness that is considered in the plant safety analysis is maintained. The overall containment leakage rate limit specified by Technical Specifications is maintained. Additionally, the on-line containment monitoring capability that is inherent to inerted BWR containments allows for the detection of gross containment leakage should it develop during power operation.

Therefore, the proposed Technical Specification change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Alvin Gutterman, Morgan Lewis, 1111 Pennsylvania Avenue NW., Washington, DC 20004.

NRC Section Chief: L. Raghavan.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: March 18, 2002.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TS) to remove the administrative requirement that a candidate for the plant operations manager position hold a Senior Reactor Operator License at the time of appointment. This proposed change to the TS endorses Regulatory Guide 1.8, Revision 3, ''Qualification and Training of Personnel for Nuclear Power Plants,'' and would, therefore, allow a broader base of qualified candidates to hold this position.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change provides enhancement to the current requirements and clarifies the qualification requirements for the operations manager position. This provides additional assurance that the personnel filling this position will be properly qualified. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change provides enhancement to the current requirements and clarifies the qualification requirements for the operations manager position. There are no structures, systems, or components affected by this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

The proposed change does not involve a significant reduction in a margin of safety. The proposed change provides enhancement to the current requirements and clarifies the qualification requirements for the operations manager position. This provides additional assurance that the personnel filling this position will be properly qualified. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP 601 13th Street, NW., Suite 1000 South, Washington, DC 20005

NRC Section Chief: Richard J. Laufer.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: March 18, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation LCO, following a missed surveillance. The delay period would be extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement would be added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated March 18, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in [a] margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Daniel F. Stenger, Ballard Spahr Andrews & Ingersoll, LLP, 601 13th Street, NW., Suite 1000 South, Washington, DC 20005.

NRC Section Chief: Richard J. Laufer.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: January 24, 2002.

Description of amendment request: The proposed amendments would delete requirements from the Technical Specifications (TS) (and, as applicable, other elements of the licensing bases) to maintain a Post Accident Sampling System (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 11, 2000 (65 FR 49271) on possible amendments to eliminate PASS, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 31, 2000 (65 FR 65018). The licensee affirmed the applicability of the following NSHC determination in its application dated July 2, 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase

in the Probability or Consequences of an Accident Previously Evaluated.

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: John A. Nakoski.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 14, 2002

Description of amendment request: The proposed amendment revises Technical Specifications (TS) 3.3.2 requirements for Loss of Power Instrumentation (Functional Unit 8) and the Technical Specifications 3.8.1.1, 3.8.1.2, and 3.8.1.3, for AC Sources.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not change the plant design basis, system configuration or operation, and do not add or affect any accident initiator. Therefore, STPNOC concludes that there is no significant increase in the possibility of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed changes do not change the plant design basis, system configuration or operation, and do not add or affect any accident initiator. Therefore, STPNOC concludes the proposed change does not create the possibility of a new or different kind of accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

No actual plant equipment or accident analyses will be affected by the proposed change. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety system settings, or will not relax the bases for any limiting conditions of operation. Therefore, STPNOC concludes the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Morgan Lewis, 1111 Pennsylvania NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Virginia Electric and Power Company, Docket No. 50–338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of amendment request: December 7, 2001.

Description of amendment request: This proposed amendment revises Technical Specifications Surveillance Requirement 4.6.1.2, ''Containment Leakage.'' The proposed change will permit a one-time 5-year extension to the 10-year performance-based Type A test interval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed extension to Type A testing cannot increase the probability of an accident previously evaluated since extension of the containment Type A testing is not a physical plant modification that could alter the probability of accident occurrence nor, is an activity or modification by itself that could lead to equipment failure or accident initiation.

The proposed extension to Type A testing does not result in a significant increase in the consequences of an accident as documented in NUREG–1493. The NUREG notes that very few potential containment leakage paths are not identified by Types B and C tests. It concludes that reducing the Type A (ILRT [integrated leak rate test]) testing frequency to once per twenty years leads to an imperceptible increase in risk.

North Anna provides a high degree of assurance through testing and inspection that the containment will not degrade in a manner detectable only by Type A testing. The last two Type A tests identified containment leakage within acceptable criteria, indicating a very leak-tight containment. Inspections required by the ASME [American Society of Mechanical Engineers] Code are also performed in order to identify indications of containment degradation that could affect leak-tightness. Separately, Types B and C testing, required by Technical Specifications, identifies any containment opening from design penetrations, such as valves, that would otherwise be detected by a Type A test. These factors establish that an extension to the North Anna Type A test interval will not represent a significant increase in the consequences of an accident.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revision to North Anna Technical Specifications adds a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A testing does not create the possibility of a new or different type of accident since there are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed revision to North Anna Technical Specifications adds a one-time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one-time basis to fifteen years from the last Type A test. The proposed extension to Type A testing will not significantly reduce the margin of safety. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year extension in Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1 percent of the overall risk and that decreasing the Type A testing frequency would have a minimal affect on this risk since 95% of the Type A detectable leakage paths would already be detected by Type B and C testing. Furthermore, for North Anna, maintaining the containment subatmospheric during plant operations further reduces the risk of any containment leakage path going undetected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 29, 2001.

Description of amendment request: This amendment proposes to revise the Technical Specifications containment air partial pressure versus service water temperature operating limits and surveillance requirements for the recirculation spray pump start delay times.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes to the containment air partial pressure versus service water temperature operating curve and recirculation spray timer delays will continue to ensure that the containment remains operable to mitigate Design Basis Accidents. The revised containment operating curve and timer delays do not affect the probability of occurrence of any accident previously analyzed. The revised containment licensing basis analyses use approved analytical methods and continue to demonstrate that the established accident analysis acceptance criteria are met. Therefore, there is no increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to the containment air partial pressure versus service water temperature operating curve and recirculation spray timer delays will not create any new accident or event initiators. The containment will continue to be operated in a similar manner. No systems, structures, or components are being physically modified such that design function is being altered. The proposed change does not alter the nature of events postulated in the UFSAR [Updated Final Safety Analysis Report] nor does it introduce any unique precursor mechanisms. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type than previously evaluated.

3. Does the change involve a significant reduction in the margin of safety?

The proposed changes to the containment air partial pressure versus service water temperature operating curve and recirculation spray time delays and supporting analyses maintain the existing safety margins. The revised containment analyses demonstrate that current acceptance criteria continue to be satisfied. Therefore, the proposed changes do not result in a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: February 26, 2002.

Description of amendment request: This proposed amendment revises the surveillance frequency of the quench spray and recirculation spray system nozzles from a time period of every 10 years to whenever maintenance is conducted that could contribute to nozzle blockage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change revises the surveillance frequency from every 10-years to ''following maintenance that could result in nozzle blockage.'' Analyzed events are initiated by the failure of plant structures, systems, or components. The containment spray system is not considered as an initiator of any analyzed event. The proposed change does not have a detrimental impact on the integrity of any plant structure, system or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident. As a result, the probability of any accident previously evaluated is not significantly increased.

The proposed change revises the surveillance frequency. Reduced testing is justified where operating experience has shown that routinely passing a surveillance test performed at a specified interval has no apparent connection to overall component reliability. In this case, routine surveillance testing at the specified frequency is not connected to any activity which may initiate reduced component reliability and therefore, has been of limited value in ensuring component reliability. Thus, the proposed frequency change is not significant for a reliability standpoint. The proposed containment spray nozzle surveillance frequency has been established based on achieving acceptable levels of equipment reliability.

This change does not affect the plant design. Due to the plant design, the spray ring headers are maintained dry. Formation of significant corrosion products is unlikely. Due to their location at the top of the containment, introduction of foreign material from exterior to the headers is unlikely. Since maintenance that could introduce foreign material is the most likely cause for obstruction, testing or inspection following such maintenance would verify the nozzle(s) remain unobstructed and the system's continued capability to perform its safety function. As a result, the consequences of any accident previously evaluated are not significantly affected by the proposed change.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

The margin of safety for this system is based on the capacity of the spray headers. The system is not susceptible to corrosion induced obstruction or obstruction from external sources to the system. Performance of maintenance on the spray ring header would now require evaluation of the potential for nozzle blockage and the need for a test or inspection. Consequently, the spray header nozzles should remain unblocked and available in the event that the safety function is required. Therefore, the capacity of the system would remain unaffected. Hence, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Virginia Electric and Power Company, Docket No. 50–339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of amendment request: February 11, 2002.

Description of amendment request: This requested amendment would revise Facility Operating License Number NPF–7 to permit Virginia Electric and Power Company to irradiate a lead test assembly (LTA) at North Anna Power Station, Unit 2 to an end-of-life assembly average burnup of about 70 GWD/MTU, with the lead rod average burnup in this assembly approaching 73 GWD/MTU. The accompanying requested exemptions from 10 CFR 50.44, 10 CFR 50.46, and Appendix K of 10 CFR 50 will be processed separately.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability of occurrence or the consequences of an accident previously evaluated is not significantly increased. The Framatome lead test assembly is very similar in design to the Westinghouse fuel that comprises the remainder of the core. The reload core design for the North Anna cycle where this assembly will operate to high burnup will meet all applicable design criteria. The performance of the Emergency Core Cooling system will not be affected by the operation of the lead test assembly, and operation of the LTA to high burnup will not result in a change to the North Anna reload design and safety analysis limits. Operation of one Framatome LTA to high burnup will not result in a measurable impact on normal operating plant releases, and will not increase the predicted radiological consequences of accidents postulated in Chapter 15 of the North Anna UFSAR [Updated Final Safety Analysis Report]. Therefore, neither the probability of occurrence nor the consequences of any accident previously evaluated is significantly increased.

2. The possibility for a new or different type of accident from any accident previously evaluated is not created. The Framatome lead test assembly is very similar in design (both mechanical and composition of materials) to the resident Westinghouse fuel. All design and performance criteria will continue to be met and no new single failure mechanisms will be created. The irradiation of this fuel assembly to high burnup does not involve any alteration to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

3. The margin of safety is not significantly reduced. The operation of one Framatome lead test fuel assembly to high burnup does not change the performance requirements of any system or component such that any design criteria will be exceeded. The normal limits on core operation defined in the North Anna Technical Specifications will remain applicable for the irradiation of this assembly to high burnup. Evaluations will be performed to confirm that safety analyses based on the resident Westinghouse fuel remain applicable for the core in which the high burnup assembly is irradiated. Therefore, the margin of safety as defined in the Bases to the North Anna Technical Specifications is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: June 21, 2001.

Brief description of amendment: The amendment replaces individual main steamline leakage limits with an aggregate leakage limit, revising technical specification surveillance requirement 3.6.1.3.9, which provides leakage rate limits applicable to the main steamline isolation valves.

Date of issuance: March 26, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 145.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 3, 2001 (66 FR 50464). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: September 17, 2001.

Brief description of amendment: The amendment revises the test frequency for the containment spray nozzles from ''once per 10 years'' to ''following activities that could result in nozzle blockage.''

Date of issuance: March 28, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 146.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 17, 2001 (66 FR 52796). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: July 5, 2001, as supplemented December 28, 2001, and March 1, 2002.

Brief description of amendment: The amendment relaxes operability requirements for primary containment, secondary containment systems, and the standby gas treatment system during the movement of irradiated fuel and during core alterations.

Date of issuance: April 3, 2002

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 147

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64286). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: May 21, 2001

Brief description of amendment: The amendment revises the actions required if the refueling equipment interlocks become inoperable. The additional request in the application to revise the frequency of the refueling equipment interlock inputs channel functional test from 7 to 31 days is not included in the issued amendment and will be addressed by separate correspondence.

Date of issuance: April 4, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 148.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 26, 2001 (66 FR 66463). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 4, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: June 18, 2001, as supplemented September 7 and 28, October 17, 23, 26, and 31, November 8 (2 letters), 20, 21, 29, and 30, and December 5, 6, 7, 13 (2 letters), 20, 21, and 26, 2001, and January 8, 15, 16, and 24, and March 15, 22, and 29, 2002.

Brief description of amendment: The amendment would allow an increase in the licensed power from 2894 megawatts thermal (MWt) to 3473 MWt.

Date of issuance: April 5, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 149.

Facility Operating License No. NPF–62: The amendment revised the Operating License and the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 1, 2002 (67 FR 5001). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 5, 2002.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: November 30, 2001.

Brief description of amendment: The amendment revises surveillance requirement (SR) 3.0.3 to extend the delay period, before entering a limiting condition for operation, following a missed surveillance. The delay period is extended from the current limit of ''. . . up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''. . . up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: April 9, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 150.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7411). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 2002.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: July 27, 2001, as supplemented on January 16 and February 26, 2002.

Brief description of amendments: The amendments add additional references to Technical Specification 5.6.5.b to allow the use of ZIRLO™ clad fuel rods in the Calvert Cliffs reactor cores.

Date of issuance: April 8, 2002.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment Nos.: 251, 228.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 5, 2001 (66 FR 46476). The January 16 and February 26, 2002, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated April 8, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: July 31, 2001, as supplemented by letter dated February 5, 2002.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) to allow an extension of the three-year inspection interval of the reactor coolant pump flywheel volumetric examination to 10 years. In addition, the inspection interval requirement would be moved to the administrative controls section of the TSs.

Date of issuance: April 11, 2002.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 241.

Facility Operating License No. NPF–6: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 22, 2001 (66 FR 44167). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: October 30, 2001, as supplemented by letters dated February 25 and March 13, 2002.

Brief description of amendment: The license amendment request proposes changes to Arkansas Nuclear One, Unit 2 Technical Specification (TS) 3/4.4.9, ''Pressure/Temperature Limits,'' and TS 3.4.12, ''Low Temperature Overpressure Protection (LTOP) System.'' The primary changes are to update the existing pressure/temperature limits from 21 to 32 effective full power years and to include additional restrictions in the LTOP TSs.

Date of issuance: April 15, 2002.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 242.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64294). The supplemental letters provided clarifying information that did not change the staff's proposed no significant hazards consideration determination or expand the application beyond the scope of the **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 2002.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: October 2, 2001.

Brief description of amendment: The amendment revises Technical Specification 3.3.2.1 Table 3.3–4, ''Engineered Safety Feature Actuation System Instrumentation Trip Values,'' Functional Unit 7.b, ''Loss of Power, 460 volt Emergency Bus Undervoltage,'' by changing the referenced bus from the 460 volt (V) to the 480 V bus, by removing the trip setpoint, and by slightly increasing the range of allowable values for the degraded voltage setting and its associated time delay.

Date of issuance: April 16, 2002.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 243.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register***: October 31, 2001 (66 FR 55015). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: November 30, 2001.

Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: April 8, 2002.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 192 and 186.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register***: February 19, 2002 (67 FR 7417). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 2002.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: November 30, 2001.

Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: April 8, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 153 and 139.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register***: February 19, 2002 (67 FR 7417). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 2002.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: February 22, 2002.

Brief description of amendments: The amendments would relocate technical specifications (TSs) 3/4.9.6, ''Refueling Operations—Manipulator Crane Operability,'' and TSs 3/4.9.7, ''Refueling Operations—Crane Travel—Spent Fuel Storage Pool Building,'' with associated Bases to the D. C. Cook updated final safety analysis report.

Date of issuance: April 18, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 267 and 248.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register***: March 19, 2002, (67 FR 12603). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 18, 2002.

No significant hazards consideration comments received: No.

North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 2, 2001, as supplemented November 2, December 4, and December 19, 2001, and January 7, 2002.

Description of amendment request: The amendment modifies the Technical Specifications to allow a one-time extension of the Appendix J Type A test (containment integrated leakage rate test) interval from 10 years to 15 years.

Date of issuance: April 11, 2002.

Effective date: As of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 82.

Facility Operating License No. NPF–86: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** December 12, 2001 (66 FR 64298). The December 4 and December 19, 2001, and the January 7, 2002, supplements were clarifying in nature, did not change the scope of the original **Federal Register** notice, and did not affect the staff's original proposed finding of no significant hazards considerations. The November 2, 2001, supplement was considered in the staff's proposed finding of no significant hazards considerations.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 2002.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: November 2, 2001.

Brief description of amendment: The amendment changes Technical Specification Table 3.3.1–1, ''Reactor Protective System Instrumentation,'' Item 1, ''Variable High Power Trip [VHPT],'' by increasing the maximum allowable value for the VHPT from less than or equal to 106.5 percent rated thermal power (RTP) to less than or equal to 111 percent RTP.

Date of issuance: April 10, 2002.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 208.

Facility Operating License No. DPR–20: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** November 28, 2001 (66 FR 59510). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 10, 2002.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of application for amendment: January 17, 2002, as supplemented on March 8 and 22, 2002.

Brief description of amendment: The amendment revises Salem, Unit No. 2, Technical Specifications Section 6.8.4.f, and provides for an alternate method for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.54(o), and 10 CFR Part 50, Appendix J, Option B. Specifically, the amendment allows a

one-time interval increase for the Salem, Unit No. 2, Type A, Integrated Leakage Rate Test from a maximum of a 10-year interval to a maximum 15-year interval.

Date of issuance: April 11, 2002.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 232.

Facility Operating License No. DPR–75: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 7, 2002 (67 FR 10450). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 2002.

No significant hazards consideration comments received: No.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: April 18, 2001.

Brief description of amendment: This amendment revises volumetric air flow units for Technical Specifications (TS) 4.7.6.c.1, c.3, e.1, e.3, f, and g to identify standard air flow units expressed as standard cubic feet per minute. Volumetric air flow units for TS 4.6.3.b.1, b.2, c.1, and d, and TS 4.9.11.b.1, b.3, d.1, e, and f are being revised to identify actual air flow units and are expressed as actual cubic feet per minute.

Date of issuance: April 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 159.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 30, 2001 (66 FR 29361). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 11, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50–321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: January 4, 2002, as supplemented by letter dated March 15, 2002.

Brief description of amendment: The amendment revised the Safety Limit Minimum Critical Power Ratio for single loop operation in theTechnical Specifications to reflect the results of a cycle-specific calculation for Unit 1 Cycle 21.

Date of issuance: April 5, 2002

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 229.

Facility Operating License No. DPR–57: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5333). The supplement dated March 15, 2002, provided clarifying information that did not change the scope of the January 4, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 5, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: December 14, 2001

Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less'' to ''* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater.'' In addition, the following requirement is added to SR 3.0.3: ''A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed.''

Date of issuance: April 8, 2002.

Effective date: As of the date of issuance and shall be implemented by August 1, 2002.

Amendment Nos.: 125 and 103.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications and associated Bases.

Date of initial notice in ***Federal Register:*** March 5, 2002 (67 FR 10015). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 2002.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 22, 2001, as supplemented by letters dated January 21; February 5, 14, and 27; and March 4, 2002. The supplementary letters provided clarifications of the application dated August 22, 2001, and did not alter the NRC staff's conclusions regarding no significant hazards consideration determination.

Brief description of amendments: The proposed amendments revise the Technical Specifications to reflect a 1.4 percent increase in the reactor core thermal power level from 3,800 megawatts thermal (MWt) to 3,853 MWt.

Date of issuance: April 12, 2002.

Effective date: The amendments are effective as of the date of issuance, to be implemented within 60 days from the date of issuance for Unit 1 and 60 days from date of installation of Δ94 steam generators for Unit 2.

Amendment Nos.: Unit 1–138; Unit 2–127.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 26, 2001 (66 FR 66472). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 12, 2002.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: December 11, 2000, as supplemented by letters dated May 30, June 18, July 16, July 20, August 13, August 27, September 27, October 10, October 17, November 8, November 19, November 29, December 3, December 7, December 12, and December 13, 2001, and January 2, January 25, January 31, February 11, February 18, February 22, February 27, March 7, March 18, March 22, and March 26, 2002.

Brief description of amendment: These amendments replace, in their entirety, the current technical specifications with a set of improved technical specifications based on NUREG–1431, Revision 1, ''Standard Technical Specifications, Westinghouse Plants,'' dated April 1995.

Date of issuance: April 5, 2002.

Effective date: As of the date of issuance and shall be implemented no later than September 2, 2002.

Amendment Nos.: 231 and 212.

Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the Technical Specifications and the Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** February 26, 2002 (67 FR 8827). The February 27, March 7, March 18, and March 22, 2002 supplements contained clarifying information only, and did not change or expand the scope of the February 26, 2002, **Federal Register** notice. The March 26, 2002 supplement withdrew a beyond scope issue and reduced the scope of the **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 5, 2002.

Dated at Rockville, Maryland, this 23rd day of April 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–10456 Filed 4–29–02; 8:45 am]

BILLING CODE 7590–01–P

PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

EXECUTIVE COUNCIL ON INTEGRITY AND EFFICIENCY

Senior Executive Service Performance Review Board Membership

AGENCY: President's Council on Integrity and Efficiency (PCIE) and Executive Council on Integrity and Efficiency (ECIE).

ACTION: Notice.

SUMMARY: This notice sets forth the names and titles of the current membership of the PCIE/ECIE Performance Review Board.

EFFECTIVE DATE: May 1, 2002

FOR FURTHER INFORMATION CONTACT: Individual Offices of (the) Inspector General.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General's Act of 1978, as amended, has created independent audit and investigative units-Offices of (the) Inspector General-at 57 Federal agencies. In 1981, the President's Council on Integrity and Efficiency (PCIE) was established by Executive Order. Executive Order 12805 of May 11, 1992, reaffirmed the PCIE and established the Executive Council on Integrity and Efficiency (ECIE). Both councils are interagency committees chaired by the Office of Management and Budget's Deputy Director for Management. Their mission is to continually identify, review, and discuss areas of weakness and vulnerability in Federal programs and operations to fraud, waste, and abuse, and to develop plans for coordinated, Government-wide activities that address these problems and promote economy and efficiency in Federal programs and operations. PCIE members include the 29 Inspectors General appointed by the President; ECIE members include the 28 Inspectors General appointed by their respective agency heads.

II. PCIE Performance Review Board

Under 5 U.S.C. 4314(c) (1)–(5) and in accordance with regulations prescribed by the Office of Personnel Management, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Mark W. Everson,

Controller/Office of Federal Financial Management.

The current members of the PCIE/ECIE Performance Review Board are as follows:

Members	Title
AGENCY FOR INTERNATIONAL DEVELOPMENT	
James R. Ebbitt	Deputy Inspector General.
Adrienne Rish	Assistant Inspector General for Investigations.
Michael G. Carrol	Assistant Inspector General for Management.
Robert S. Perkins	Assistant Inspector General for Legal Counsel.
Bruce Crandlemire	Deputy Assistant Inspector General for Audit.
DEPARTMENT OF COMMERCE	
Edward L. Blansitt	Deputy Inspector General.
Judith J. Gordon	Assistant Inspector General Systems Evaluation.
Elizabeth T. Barlow	Counsel to the Inspector General.
Jill A. Gross	Assistant Inspector General for Inspections and Evaluations.
DEPARTMENT OF DEFENSE	
Carol Levy	Assistant Inspector General for Investigations.
David A. Brinkman	Director, Audit Follow-up & Technical Support Directorate.
Alan W. White	Director, Investigative Operations Directorate.
David Crane	Director for Intelligence Review.
Thomas J. Bonnar	Deputy Assistant Inspector General for Investigations.
Patricia A. Brannin	Deputy Assistant Inspector General for Audit Policy and Oversight.
C. Frank Broome	Director for Departmental Inquiries.
Joel L. Leson	Director for Administration and Information Management.
DEPARTMENT OF EDUCATION	
Tom Carter	Assistant Inspector General for Audit Services.
Don Reid	Assistant Inspector General for Investigation Services.
Helen Lew	Deputy Assistant Inspector General for Audit Services.
DEPARTMENT OF HEALTH AND HUMAN SERVICES	
Joe Green	Assistant Inspector General for Public Health Service Audits.
Dennis J. Duquette	Deputy Inspector General for Management & Policy.
Lewis Morris	Assistant Inspector General for Legal Affairs.
D. McCarty Thornton	Deputy Inspector General for Legal Affairs.
DEPARTMENT OF JUSTICE	
Robert L. Ashbaugh	Deputy Inspector General.
Mary W. Demory	Senior Executive for Strategic Planning and Special Projects.
DEPARTMENT OF LABOR	
Colleen B. Callahan	Deputy Inspector General for Management.
Stephen J. Cossu	Deputy Inspector General for Labor Racketeering& Fraud Investigations.
José Ralls	Administrative Officer.
Sylvia Horowitz	Counsel to the Inspector General.
DEPARTMENT OF TRANSPORTATION	
Todd J. Zinser	Deputy Inspector General.
Alexis M. Stefani	Assistant Inspector General for Audits.
Thomas J. Howard	Deputy Assistant Inspector General for Maritime and Departmental Programs.
DEPARTMENT OF THE TREASURY	
Dennis S. Schindel	Deputy Inspector General.
Marla A. Freedman	Assistant Inspector General for Audit.
Michael C. Tarr	Assistant Inspector General for Investigations.
William H. Pugh, III	Deputy Assistant Inspector General for Audit (Financial Management).
Elizabeth M. Redman	Deputy Assistant Inspector General for Investigations.
Richard K. Delmar	Counsel to the Inspector General.
DEPARTMENT OF THE TREASURY—TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION	
Pamela J. Gardiner	Deputy Inspector General for Audit.
Daniel R. Devlin	Assistant Inspector General for Audit (HQ Ops And Ex Org).
Gordon C. Milbourn	Assistant Inspector General for Audit (Small Business and Corporate Progs).
Scott E. Wilson	Assistant Inspector General for Audit (Info Sys. Prog.).
Robert C. Cortesi	Deputy Inspector General for Investigations.

Members	Title
David B. Buckley	Assistant Inspector General for Investigations.
Steven M. Jones	Assistant Inspector General for Investigations.
Elmer R. Stone	Assistant Inspector General for Investigations.
Mary Anne Curtin	Chief Counsel to the Inspector General.
Joseph I. Hungate	Assistant Inspector General for Info. Tech.
DEPARTMENT OF VETERANS AFFAIRS	
Michael Slachta, Jr.	Assistant Inspector General for Auditing.
John Bilobran	Deputy Assistant Inspector General for Auditing.
Richard Ehrlichman	Deputy Assistant Inspector General for Management and Administration.
Alanson Schweitzer	Assistant Inspector General for Healthcare Inspections.
Michael Staley	Deputy Assistant Inspector General for Healthcare Inspections.
Maureen T. Regan	Counselor to the Inspector General.
ENVIRONMENTAL PROTECTION AGENCY	
Gary Johnson	Deputy Inspector General.
Elissa Karpf	Assistant Inspector General for Planning, Analysis, and Results.
John Jones	Assistant Inspector General for Mission Systems.
Emmett Dashiell	Acting, Assistant Inspector for Investigations.
Mark Bialek	Counsel to the Inspector General.
FEDERAL COMMUNICATIONS COMMISSION	
H. Walker Feaster	Inspector General.
FEDERAL EMERGENCY MANAGEMENT AGENCY	
Richard L. Skinner	Deputy Inspector General.
Nancy L. Hendricks	Assistant Inspector General for Audits.
Joseph G. Sullivan	Assistant Inspector General for Investigations.
GENERAL SERVICES ADMINISTRATION	
Joel S. Gallay	Deputy Inspector General.
Kathleen S. Tighe	Counsel to the Inspector General.
James E. Henderson	Assistant Inspector General for Investigations.
Eugene L. Waszily	Assistant Inspector General for Auditing.
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION	
David M. Cushing	Assistant Inspector General for Inspections & Assessments.
Francis P. LaRocca	Counsel to the Inspector General.
Alan J. Lamoreaux	Assistant Inspector General for Auditing.
NATIONAL SCIENCE FOUNDATION	
Thomas Cross	Deputy Inspector General.
NUCLEAR REGULATORY COMMISSION	
David C. Lee	Deputy Inspector General.
Stephen D. Dingbaum	Assistant Inspector General for Audits.
OFFICE OF PERSONNEL MANAGEMENT	
Joseph R. Willever	Deputy Inspector General.
Harvey D. Thorp	Assistant Inspector General for Audits.
Norbert E. Vint	Assistant Inspector General for Investigations.
E. Jeremy Hutton	Assistant Inspector General for Legal Affairs.
RAILROAD RETIREMENT BOARD	
William H. Tebbe	Assistant Inspector General for Investigations.
Henrietta B. Shaw	Assistant Inspector General for Audit.
SMALL BUSINESS ADMINISTRATION	
Peter L. McClintock	Deputy Inspector General.
David Gray	Counsel to the Inspector General.
Robert G. Seabrooks	Assistant Inspector General for Auditing.
Emilie Baebel	Assistant Inspector General for Inspection & Evaluation.
Mark Woods	Assistant Inspector General for Investigations.
SOCIAL SECURITY ADMINISTRATION	
Steve Schaeffer	Assistant Inspector General for Audit.
Patrick O'Carroll	Assistant Inspector General for Investigations.
Kathy Buller	Counsel to the Inspector General.
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	
Aletha Brown	Inspector General.

[FR Doc. 02–10545 Filed 4–29–02; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45795; File No. 4–429]

Joint Industry Plan; Notice of Filing of Joint Amendments Nos. 2 and 3 to the Options Intermarket Linkage Plan Relating to Satisfaction of Trade-Throughs, the Procedures for Handling Multiple Principal Orders, Restrictions on Withdrawal, and an Implementation Timetable

April 22, 2002.

Pursuant to section 11A(a)(3) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 11Aa3–2 thereunder,[2] notice is hereby given that on November 20, 2001, November 21, 2001, December 10, 2001, December 10, 2001, and December 26, 2001, the Philadelphia Stock Exchange, Inc. (''Phlx''), International Stock Exchange LLC (''ISE''), Chicago Board Options Exchange, Inc. (''CBOE''), Pacific Exchange, Inc. (''PCX''), and American Stock Exchange LLC (''AMEX'') (collectively, the ''Participants''), respectively, filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') an amendment (''Joint Amendment No. 2'') to the Options Intermarket Linkage Plan.[3] In addition, on April 5, 2002, April 9, 2002, April 15, 2002, April 15, 2002 and April 16, 2002, CBOE, ISE, Phlx, PCX, and Amex, respectively, filed with the Commission an additional amendment (''Joint Amendment No. 3'') to the Linkage Plan. In Joint Amendment No. 2, the Participants propose to alter the manner in which Participants achieve satisfaction of trade-throughs, to change the procedures for handling multiple principal orders that one Participant sends to another Participant, and to make other nonsubstantive revisions to the Linkage Plan. In Joint Amendment No. 3, the Participants propose to change the process by which a participant may withdraw from the Linkage Plan, to incorporate a specific implementation timetable into the Linkage Plan, to require each participant to provide the Commission with a detailed project plan and status reports regarding implementation of such project plan, and to conform two provisions of the Linkage Plan to Joint Amendment No. 2. The Commission is publishing this notice to solicit comments from interested persons on Joint Amendments Nos. 2 and 3.

I. Description and Purpose of the Proposed Amendments

A. Proposed Joint Amendment No. 2

The primary purpose of Joint Amendment No. 2 is to effect two substantive changes to the Linkage Plan. In addition, the proposed amendment corrects certain typographical errors in the Linkage Plan and simplifies the language of certain of the Linkage Plan's provisions.

In the first substantive change, the proposed amendment would alter the manner in which the Participants achieve satisfaction of trade-throughs. The Linkage Plan now requires that a Participant lodge a complaint when it identifies a trade-through on another exchange. That complaint must specify the verifiable number of customer contracts at the disseminated quotation that were traded-through. The exchange that traded through then responds to the

[1] 15 U.S.C. 78k–1(a)(3).

[2] 17 CFR 240.11Aa3–2.

[3] On July 28, 2000, the Commission approved a national market system plan (''Linkage Plan'') for the purpose of creating and operating an intermarket options market linkage (''Linkage'') proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086, 65 FR 48023 (August 4, 2000). Subsequently, Phlx and PCX joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000) and 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000). On June 27, 2001, the Commission approved an amendment to the Linkage Plan. *See* Securities Exchange Act Release No. 44482, 66 FR 35470 (July 5, 2001).

complaint, either by claiming an exemption from liability or by addressing the trade-through. If such exchange elects to satisfy the Participant traded-through, it would send a Satisfaction Order (as defined in the Linkage Plan) to the Participant that sent the complaint.

The proposed amendment would simplify that procedure by combining the complaint and satisfaction process. If a Participant identifies a trade-through on another exchange, that Participant would send a Satisfaction Order to the exchange that traded-through for the number of verifiable customer contracts at the disseminated quotation. The exchange receiving that order either can fill the order, claim an exemption from liability, or take the other action currently permitted under the Linkage Plan (such as correcting the price of the transaction to a price that would not be a trade-through). Due to the uncertainty as to whether a Participant will receive an execution of the Satisfaction Order, the proposed amendment would permit the Participant that sent the Satisfaction Order to reject any execution it receives if the customer order(s) underlying the Satisfaction Order had been executed or canceled while the Satisfaction Order was pending.[4]

The second substantive effect of the proposed amendment would be to change the procedures for handling multiple Principal Orders (as defined in the Linkage Plan) that one Participant sends to another Participant. Currently, the Linkage Plan provides that if a market maker on a Participant sends a Principal Order for automatic execution (that is, an order for up to 10 contracts) to another exchange, there are limits and prohibitions on any market maker from that Participant sending additional Principal Orders to the same exchange in the same options class. Subject to certain exceptions, a Participant cannot send another Principal Order for automatic execution for 15 seconds, and for the following 45 seconds it can only send Principal Orders larger than the automatic execution size.

The Participants represent that as they began developing the Linkage, they recognized that implementing this provision would be extremely difficult. Thus, the Participants propose to place the responsibility for monitoring this activity on the receiving, not the sending, Participant. Proposed amended Section 7(a)(ii)(C) of the Linkage Plan states that if a Participant received a second Principal Order for automatic execution from a Participant within 15 seconds, it could reject such order. Similarly, for the next 45 seconds, the receiving Participant could deny automatic execution to any Principal Orders it receives from the same Participant. The same exceptions to these provisions contained in the current Linkage Plan would continue to apply. The Participants represent that they believe that this provision would simplify the development of the Linkage, while continuing to provide the same protections as currently provided in the Linkage Plan.[5]

B. Proposed Joint Amendment No. 3

The primary purpose of proposed Joint Amendment No. 3 is to make two substantive changes to the Linkage Plan. In addition, the proposed amendment conforms two provisions of the Linkage Plan to Joint Amendment No. 2.

First, the proposed amendment would change the process by which a Participant withdraws from the Linkage Plan. Currently, a Participant must only provide 30 days written notice to the other Participants and the facilities manager to withdraw from the Linkage Plan. The proposed amendment would restrict withdrawal from the Linkage Plan by requiring Participants to effect an amendment to the Linkage Plan, which would be subject to Commission approval. The Participant would be required to state how it plans to accomplish, by alternate means, the goals of the Linkage Plan regarding limiting trade-throughs of prices on other exchanges trading the same options classes. A Participant would be permitted to propose such an amendment unilaterally, and approval of the other Participants would not be required.[6]

Second, the proposed amendment would incorporate into the Linkage Plan a specific implementation timetable. The Participants propose to implement the Linkage in two phases: The first phase would be limited to those aspects of the plan providing for automatic execution, and the second phase would provide all other Linkage functionality. The proposal would require the Participants to begin full intermarket testing of phase 1 no later than December 1, 2002, and testing of phase 2 no later than March 1, 2003. The Participants would be required to implement the functionality of phase 1 and phase 2 as soon as practical after successful testing, and no later than February 1, 2003 and April 30, 2003, respectively.[7]

In addition, proposed Joint Amendment No. 3 would require each Participant to provide the Commission with a detailed project plan and monthly status reports regarding implementation of such project plan.[8]

Lastly, proposed Joint Amendment No. 3 would conform two Linkage Plan provisions to Joint Amendment No. 2 by replacing references to trade-through complaints with references to Satisfaction Orders.[9]

II. Implementation of the Plan Amendments

The Participants propose to make the proposed amendments to the Linkage Plan reflected in this filing effective when the Commission approves the amendments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Linkage Plan amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed Linkage Plan amendments that are filed with the Commission, and all written communications relating to the proposed Linkage Plan amendments between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal offices of the Amex, CBOE, ISE, Phlx, and PCX. All submissions should refer to File No. 4–429 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10541 Filed 4–29–02; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* proposed changes to the definitions of ''Satisfaction Order'' and ''Reference Price,'' and § 8(c) of the Linkage Plan.

[5] *See* proposed changes to § 7(a)(ii)(C) and (D) of the Linkage Plan.

[6] *See* Proposed § 4(d) of the Linkage Plan.

[7] *See* Proposed § 12(a) of the Linkage Plan.

[8] *See* Proposed § 12(b) of the Linkage Plan.

[9] *See* proposed changes to § 8(c) of the Linkage Plan.

[10] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45799; File No. SR–BSE–2001–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Clearly Erroneous Transactions in Nasdaq Securities

April 22, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] notice is hereby given that on December 26, 2001, the Boston Stock Exchange (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish a rule governing the resolution of clearly erroneous transactions in The Nasdaq Stock Market, Inc. (''Nasdaq'') securities. The text of the proposal is below. All language is new.

Chapter XXXV Clearly Erroneous Transactions

Sec. 30. For the purposes of this section, the terms of a transaction are clearly erroneous when there is an obvious error in any term, such as price, number of shares (or other unit of trading), or identification of the security.

Officers of the Nasdaq Stock Market (''Nasdaq'') shall have the authority to review any transaction arising from the use of a Nasdaq system, including, but not limited to, SuperSoes, SelectNet, or SuperMontage. Exchange specialists authorized to trade Nasdaq securities are obligated to cooperate with officers of Nasdaq in their review of clearly erroneous transactions, and to abide by the procedures set forth in Nasdaq Rule 11890 (b) and (c).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add a section to Chapter XXXV of its rules, which pertains to the trading of Nasdaq securities on the Exchange. Proposed Section 30 would govern situations in which there is an obvious error in any part of a Nasdaq security transaction. In large part, the proposed Section 30 conforms to Nasdaq Rule 11890, Clearly Erroneous Transactions, and obliges Exchange specialists to cooperate with officers of Nasdaq in their review of clearly erroneous transactions occurring on a Nasdaq system.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act[2] in that the proposed rule change is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2001–09 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10539 Filed 4–29–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b)(5).

[3] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45800; File No. SR–CBOE–2001–65]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Permit a Single Response From Market Makers to a Request To Execute a Large Order

April 22, 2002.

I. Introduction

On December 17, 2001, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit a single response from market makers to a request to execute a large order.[3] The CBOE filed an amendment to the proposed rule change on March 6, 2002.[4] The **Federal Register** published the proposed rule change and Amendment No. 1 for comment on March 18, 2002.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended by Amendment No. 1.

II. Description of Proposal

The CBOE proposes to amend CBOE Rule 8.7 to allow CBOE market makers to respond to a member's request for a quick and certain market. Proposed Interpretation .11 to CBOE Rule 8.7 would permit market makers jointly to discuss a request from a member for a single response to an order that is greater in size than the RAES order eligibility size for that option class, in order to provide a single bid or offer, based upon the aggregate of individual bids or offers by members in the trading crowd. Such coordination would be permitted only in situations where the member representing the order requests a single bid or offer. When a single bid or offer made in response to a request results in the order being executed, the order will be apportioned among the market makers who participated in making the single bid or offer according to the number of contracts each market participant committed to trading, and each market maker shall be obligated to fulfill his portion of the single bid or offer at the single price.[6]

III. Discussion

After careful consideration the Commission has determined to approve the proposed rule change. For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[7] and, in particular, with section 6(b)(8) of the Act,[8] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The proposed rule change would permit CBOE market makers in the trading crowd to make a collective response to a request to fill a large order, provided that a collective response is requested. The Commission believes that this exception recognizes the desire of the marketplace to provide a single price to a request to fill a large order that a single member would not be able to fill. The Commission believes that any anticompetitive effect of this exception is limited by requiring that there be a member's specific request for a single price and that the order be sufficiently large.[9] In addition, the Commission notes that notwithstanding this exception, a single crowd participant may voice a bid or offer independently from, and differently from, the LMM and other members of a trading crowd.

Although the Exchange states in the proposal its belief that the proposed rule change enhances competition, the Commission does not agree. The Commission believes, however, that the proposal is not inconsistent with the Act because it does not impose an inappropriate burden on competition. Moreover, the Commission strongly disagrees with the CBOE's statement in its proposal that members representing large orders who do not request a single price may not be satisfying their duty of best execution because of the risk that the market may move substantially as the member attempts to execute the whole order in pieces. The Commission also notes that in Amendment No. 1, the Exchange deleted a footnote from the original filing that stated that a member would be viewed as having requested a single bid or offer if the member expressed to a trading crowd that generally he or she expected a single bid or offer for any order of greater than the RAES order eligibility size, unless he or she requested otherwise in a specific circumstance. In light of this change, and for the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

Finally, the Commission finds that the proposed rule change is designed to effectively limit the circumstances in which collective action is permissible.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2001–65), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10542 Filed 4–29–02; 8:45 am]

BILLING CODE 8010–01–P

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.j. of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange, among other things, to adopt new, or amend existing, rules to include any practice or procedure whereby market makers trading any particular option class determine by agreement the spreads or option prices at which they will trade any option class.

[4] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation, dated March 4, 2002 (''Amendment No. 1). Amendment No. 1 deletes a footnote from the original filing that stated that a member would be viewed as having requested a single bid or offer if the member expressed to a trading crowd that generally he or she expected a single bid or offer for any order of greater than the Exchange's Retail Automatic Execution System (''RAES'') order eligibility size, unless he or she requested otherwise in a specific circumstance.

[5] Securities Exchange Act Release No. 45542 (March 12, 2002), 67 FR 12068.

[6] The Exchange has submitted another proposed rule change (SR–CBOE–2002–08) relating to allocation of trades, including trades pursuant to proposed Interpretation and Policy .11 to CBOE Rule 8.7.

[7] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(8).

[9] The Commission expects the Exchange to monitor the collective actions that are undertaken pursuant to the rule change approved herein for any undesirable or inappropriate anticompetitive effects. The Commission's examination staff will monitor the Exchange's efforts in this regard.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45803; File No. SR–ISE–2002–01]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 thereto by the International Securities Exchange LLC To Restructure From a Limited Liability Company to a Corporation

April 23, 2002.

I. Introduction

On January 11, 2002, the International Securities Exchange LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change[3] to restructure from a limited liability company to a corporation and to ''demutualize'' by separating the equity interest in the Exchange from members' trading rights. On March 5, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 15, 2002.[5] The Commission received no comments on the proposed rule change. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The ISE is currently structured as a limited liability company (''LLC''), in which memberships encompass both trading rights and equity ownership. The Exchange plans to restructure from a limited liability company (''Old ISE'') to a Delaware stockholder corporation (''New ISE'') and to demutualize by separating the equity interest in the Exchange from members' trading rights. Newly issued Class A Common Stock would represent the equity ownership in ISE and newly issued Class B Common Stock would represent the trading rights on ISE. The members of Old ISE would become stockholders of New ISE. New ISE may issue classes of preferred stock in the future, the terms of which would be defined by the Board and filed with the Commission for approval.

In addition, the Exchange has adopted the following interpretation of its Rules:

> Upon reorganization, the Exchange would be a Delaware corporation. Pursuant to Paragraph (a)(ii) of Section II of the Exchange's Certificate of Incorporation, the holders of the Exchange's Class A Common Stock ''would be entitled to receive, when and if declared by the Board of Directors, out of the assets of [New ISE] which are by law available therefor, dividends payable either in cash, in stock or otherwise.'' The Exchange states its policy is that any revenues it receives from regulatory fees or regulatory penalties: would be segregated; would be applied to fund the legal, regulatory and surveillance operations of the Exchange; and would not be used to pay dividends to the holders of the Class A Common Stock.

A. Class B Common Stock

The Class B Common Stock would confer upon holders trading privileges and specified voting rights associated with the memberships in Old ISE. The Class B shares would be issued in three series corresponding with the existing membership types. Accordingly, each Class A Membership Interest (Primary Market Maker (''PMM'') Members) would receive one share of Class B Common Stock, Series B–1 (the ''Series B–1 Stock''); each Class B Membership Interest (Competitive Market Maker (''CMM'') Members) would receive one share of Class B Common Stock, Series B–2 (the ''Series B–2 Stock''); and each Class C Membership Interest (Electronic Access Members (''EAM'')) would receive one share of Class B Common Stock, Series B–3 (the ''Series B–3 Stock'').

Series B–1 Stock holders and Series B–2 Stock holders would have voting rights with respect to actions affecting the number of issued shares of Series B–1 Stock and Series B–2 Stock (the ''Core Rights''). The holders of each series of Class B Common Stock would have the same trading privileges they currently hold as PMMs, CMMs, and EAMs.

A holder of Class B Common Stock, together with any affiliate, would not be permitted to own more than 20% of Series B–1 Stock or Series B–2 Stock. ISE Founders[6] would have a temporary exemption, not to extend past May 26, 2010, from these ownership concentration limits. Founders, however, would have no voting rights, other than a vote related to Core Rights, for any shares in excess of 20% of the Series B–1 Stock or 20% of the Series B–2 Stock.

B. Class A Common Stock

In addition to receiving a share of Series B–1 common stock, each PMM will also receive several shares of Class A Common Stock. The holders of Class A Common Stock would have the right to vote on any matter that requires a vote of the stockholders of New ISE, other than votes with respect to Core Rights. If a holder of Class A Common Stock, together with any affiliate, owns more than 20% of the Class A Common Stock, the holder would have no voting rights for shares owned in excess of the 20% concentration limit. The New ISE Board, however, may approve an exemption to this prohibition for any person other than a New ISE member, an affiliate of a New ISE member, or a person subject to a statutory disqualification under Section 3(a)(3) of the Act,[7] if the Board determines that such an exemption generally would be consistent with the New ISE's self-regulatory responsibilities. ISE Founders would have a temporary exemption, not to extend past May 26, 2010, from the voting limitation on Class A Common Stock shares owned in excess of 20%, but only with respect to any vote regarding any merger, consolidation, or dissolution of the New ISE or any sale of all or substantially all of the assets of the New ISE.

C. Transfer of Memberships

In addition, the Exchange proposes to eliminate the bid/offer system of selling memberships and to eliminate the claims process and deposit requirements for sales, transfer, and leases. The Exchange proposes to allow members to negotiate their own purchases and sales, subject to the purchase or transfer agreement being filed with, and approved by, the Exchange.

D. Election of the Board of Directors

The size and composition of the Board of Directors of New ISE would

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The text of the proposed rule change consists of: (1) A new Certificate of Incorporation; (2) a new Constitution; and (3) amendments to the Exchange's Rules.

[4] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated March 4, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange expanded the concentration limits regarding ownership of the Class A Common Stock of its proposed corporation. Specifically, the Exchange amended the proposed rule change to include a general prohibition on the voting rights with respect to stock that a person owns above a 20 percent ceiling. However, the Exchange states that its Board of Directors (''Board'') would be able to exempt a person from the voting limit if such an exemption generally would be consistent with the Exchange's self-regulatory responsibilities. The Board would not be able to grant an exemption to: members; their affiliates; or persons subject to a statutory disqualification. In addition, Amendment No. 1 specifies that any ''poison pill'' the new corporation adopts will be subject to prior Commission approval.

[5] *See* Securities Exchange Act Release No. 45529 (March 8, 2002), 67 FR 11732.

[6] As defined in the New ISE Constitution, the term ''Founder'' means a person or entity that purchased the former Class A or Class B Memberships directly from the Exchange on or prior to August 1, 1998, but only with respect to his or its ownership of such memberships.

[7] 15 U.S.C. 78c(a)(3).

remain the same following the demutualization. In future elections, the holders of the Class B Common Stock would elect six directors: two directors elected by the holders of Series B–1 Stock; two directors elected by the holders of Series B–2 Stock; and two directors elected by the holders of Series B–3 Stock. The holders of the Class A Common Stock would elect nine directors: eight non-industry directors (including at least two who would be public representatives) and the Chief Executive Officer. As opposed to the current structure, PMMs, CMMs, and EAMs would have the right to vote for the non-industry directors only to the extent they own Class A Common Stock. A nominating committee consisting of representatives of holders of the Series B Common Stock would select the nominees for Series B directors, and the non-industry directors on the Board would select the nominees for non-industry directors. Holders of the appropriate classes of common stock also would be able to nominate rival candidates for the Board.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in that that it is designed to (1) assure fair representation of its members in the selection of an exchange's directors and administration of its affairs and provide that, among other things, one or more directors shall be representative of investors and not be associated with the exchange, or with a broker or dealer; (2) prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system; and (3) protect investors and the public interest.

A. Fair Representation of Members

Section 6(b)(3) of the Act requires that the rules of an exchange assure fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors be representative of issuers and investors and not be associated with a member of the exchange, or with a broker or dealer.[10]

The size and composition of the Board of Directors of New ISE would remain the same following the demutualization; the Board would continue to consist of 15 directors and initially will consist of the current Board of Old ISE. In future elections, the holders of the Class B Common Stock will elect six directors: two directors elected by the holders of Series B–1 Stock; two directors elected by the holders of Series B–2 Stock; and two directors elected by the holders of Series B–3 Stock. The nominations of these six directors would be made by the New ISE nominating committee, which would be comprised of one Series B–1 Common Stock representative, one Series B–2 Common Stock representative, and one Series B–3 Common Stock representative. Persons may also be nominated to be Series B Directors by a petition signed by 5% or more of the holders of the Series of Class entitled to elect such persons.

The holders of the Class A Common Stock will elect nine directors: Eight non-industry directors (including at least two who would be public representatives) and the Chief Executive Officer. Nominees for election of the Non-Industry Board Directors, including Public Directors, would be selected by the Non-Industry Directors currently on the Board. Persons may also be nominated to be Non-Industry Directors by petition signed by 20% or more of the holders of Class A Common Stock. Thus, the Board would include six directors nominated and elected by members. In addition, the proposed New ISE Constitution provides that the number of non-industry members on the executive and audit committees equals or exceeds the number of industry members. The New ISE executive committee will consist of six directors, at least three of which will be non-industry directors and at least one of whom will be a public director.[11] In addition, the New ISE audit committee will consist of three to five directors, each of which will be a non-industry director, and at least one of the non-industry directors will be a public director.[12]

The Commission finds that the selection of 6 of the 15 directors on the New ISE's Board and the manner in which such directors will be nominated and elected satisfies the fair representation requirement in Section 6(b)(3) of the Act.[13] Moreover, the Commission finds that the majority non-industry composition of the Board of the New ISE, together with the compostional balance on the committees, is sufficient to help assure that the Exchange actively works to protect the public's interest in the fairness of the securities markets and is consistent with Section 6(b)(3) of the Act.[14]

B. Concentration Limits

The ISE has also proposed concentration limits to restrict the number of shares that a stockholder, together with any affiliate, may own or vote. A holder of Class B Common Stock, together with any affiliate, would not be permitted to own more than 20% of Series B–1 Stock or Series B–2 Stock. ISE Founders would have a temporary exemption, not to extend past May 26, 2010, from the ownership concentration limits. Founders, however, would have no voting rights, other than a vote related to Core Rights, for any shares in excess of 20% of the Series B–1 Stock or 20% of the Series B–2 Stock.

If a holder of Class A Common Stock, together with any affiliate, owns more than 20% of the Class A Common Stock, the holder would have no voting rights for shares owned in excess of the 20% concentration limit. The New ISE Board, however, would be permitted to approve an exemption to this prohibition for any person other than a New ISE member, an affiliate of a New ISE member, or a person subject to a statutory disqualification under Section 3(a)(3) of the Act,[15] if the Board determines that such an exemption generally would be consistent with New ISE's self-regulatory responsibilities. ISE Founders would have a temporary exemption, not to extend past May 26, 2010, from the voting limitation on Class A Common Stock shares owned in excess of 20%, but only with respect to any vote regarding any merger, consolidation, or dissolution of the New ISE or any sale of all or substantially all of the assets of the New ISE.

The Commission finds that the proposed restrictions on the ownership and voting on members, who are also subject to regulation by the Exchange, is consistent with the requirements of Section 6(b) of the Act.[16] Moreover, the Commission believes that the proposed

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(3).

[11] New ISE Constitution, Article V, Section 5.2.

[12] New ISE Constitution, Article V, Section 5.4.

[13] 15 U.S.C. 78f(b)(3).

[14] 15 U.S.C. 78f(b)(3).

[15] 15 U.S.C. 78c(a)(3).

[16] 15 U.S.C. 78f(b)(1).

ownership and voting concentration limits on other shareholders will minimize the potential that the control of the Exchange by one or a few shareholders would impair the Exchange's ability to carry out its self-regulatory obligations.

Finally, the Commission notes that New ISE, like Old ISE, will not be structured to provide its shareholders a profit from revenue generated by the Exchange as a result of regulatory fees or penalties imposed on Exchange members. The New ISE's policy is that any revenues it receives from regulatory fees or regulatory penalties: (1) Would be segregated; (2) would be applied to fund the legal, regulatory, and surveillance operations of the Exchange; and (3) would not be used to pay dividends to the holders of Class A Common Stock. In addition, the proposed rules of New ISE do not change any trading privileges of its members. The Commission finds that the allocation and use of regulatory fees or regulatory penalties is consistent with Section 6(b)(3) of the Act [17] because it will ensure that the regulatory authority of the Exchange is not used improperly to benefit the shareholders.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–ISE–2002–01), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10580 Filed 4–29–02; 8:45 am]

BILLING CODE 8010–01–P

[17] 15 U.S.C. 78f(b)(3).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45807; File No. SR–NASD–2002–51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Revisions to the Limited Representative—Equity Trader (Series 55) Examination Program

April 24, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) [4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing revisions to the Limited Representative—Equity Trader (Series 55) examination program. The proposed revisions update the Series 55 examination study outline,[6] selection specifications,[7] and question bank [8] to reflect changes to the laws, rules, and regulations covered by the examination. The proposed revisions do not result in any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD Regulation or the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 15A(g)(3) of the Act,[9] which requires the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, the NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD Regulation periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The Series 55 examination is required, with certain limited exceptions, for registered representatives who are engaged in proprietary trading, the execution of transactions on an agency basis, or the direct supervision of such activities, with respect to transactions in equity,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

[6] The text of the Series 55 study outline is available at NASD Regulation and at the Commission.

[7] NASD Regulation has requested confidential treatment for the Series 55 examination, and thus the specifications are omitted from this filing. The specifications have been filed separately with the Commission pursuant to Rule 24b–2 under the Act. 17 CFR 240.24b–2.

[8] Based upon instruction from the Commission staff, NASD Regulation is not filing the question bank for Commission review. *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

[9] 15 U.S.C. 78o–3(g)(3).

preferred or convertible debt securities effected otherwise than on a securities exchange. There is an exception from the requirement for the Series 55 examination for any person associated with a member whose trading activities are conducted principally on behalf of an investment company that is registered with the Commission pursuant to the Investment Company Act of 1940 and that controls, is controlled by, or is under common control with the member.

A committee of industry representatives, together with NASD Regulation staff, recently undertook a review of the Series 55 examination program. As a result of this review, NASD Regulation is proposing revisions to the Series 55 examination study outline to reflect changes in relevant laws, rules, and regulations covered by the examination, including Rules 11Ac1–5,[10] 11Ac1–6,[11] and 11Ac1–7[12] under the Act, as well as Regulation ATS.[13]

To adequately test the material covered in the revised examination, NASD Regulation is proposing to reorganize the substantive sections of the outline and to allocate questions to each section as follows: Nasdaq and Over-The-Counter Markets, 45 questions; Nasdaq Automated Execution and Trading Systems, 9 questions; Trade Reporting Requirements, 18 questions; and General Industry Standards, 28 questions. Consequently, NASD Regulation is proposing to increase the total number of multiple-choice questions on the Series 55 examination to 100 from 90.

NASD Regulation is proposing similar changes to the corresponding sections of the Series 55 examination selection specifications and question bank. The Series 55 examination will remain a 3-hour examination and the passing score for the examination will continue to be 70%.

2. Statutory Basis

NASD Regulation believes that the proposed revisions are consistent with the provisions of Sections 15A(b)(6)[14] and 15A(g)(3) of the Act,[15] which authorize the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

[10] 17 CFR 240.11Ac1–5.
[11] 17 CFR 240.11Ac1–6.
[12] 17 CFR 240.11Ac1–7.
[13] 17 CFR 242.300–303.
[14] 15 U.S.C. 78o-3(b)(6).
[15] 15 U.S.C. 78o-3(g)(3).

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[16] and Rule 19b-4(f)(1)[17] thereunder, in that the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD Regulation proposes to implement the revised Series 55 examination program on August 1, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–51 and should be submitted by May 21, 2002.

[16] 15 U.S.C. 78s(b)(3)(A)(i).
[17] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10581 Filed 4–29–02; 8:45 am]

BILLING CODE 8010–01–U

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45808; File No. SR–NASD–2002–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Revisions to the Limited Principal—Direct Participation Programs (Series 39) Examination Program

April 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1)[4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing revisions to the Limited Principal—

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A)(i).
[4] 17 CFR 240.19b–4(f)(1).
[5] *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

Direct Participation Programs (Series 39) examination program. The proposed revisions update the Series 39 examination study outline,[6] selection specifications,[7] and question bank [8] to reflect changes to the laws, rules, and regulations covered by the examination and to reflect more accurately the duties and responsibilities of a direct participation programs principal. The proposed revisions also change the method for scoring the Series 39 examination. The proposed revisions do not result in any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD Regulation or the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 15A(g)(3) of the Act,[9] which requires the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, the NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD Regulation periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The Series 39 examination is an NASD examination that qualifies an individual to function as a limited principal responsible solely for a member's activities with respect to equity interests in or the debt of direct participation programs. A committee of industry representatives, together with NASD Regulation staff, recently undertook a review of the Series 39 examination program. As a result of this review, NASD Regulation is proposing revisions to the Series 39 examination study outline to reflect changes in relevant laws, rules, and regulations covered by the examination, including rules concerning anti-money laundering as well as Regulations FD [10] and S–P,[11] and to reflect more accurately the duties and responsibilities of a direct participation programs principal.

Additionally, NASD Regulation is proposing to change the method for scoring the Series 39 examination. Currently, the Series 39 examination is graded based on two passing scores. Individuals taking the examination must obtain a score of 70% on the substantive section relating to compliance with financial responsibility rules and a score of 70% on the remaining substantive sections. Those individuals who fail either part must retake the Series 39 examination. NASD Regulation is proposing to combine both parts and require 70% as the passing score.[12] NASD Regulation also is proposing to reduce the total number of multiple-choice questions to 95 from 100. The testing time for the Series 39 examination will remain at 2 hours.

To adequately test the material covered in the revised examination, NASD Regulation is proposing to reorganize the substantive sections of the outline and to allocate questions to each section as follows: Structure and Regulation of Direct Participation Program Offerings, 47 questions; Sales Supervision, General Supervision of Employees, Regulatory Framework of NASD, 31 questions; and Compliance with Financial Responsibility Rules, 17 questions.

NASD Regulation is proposing similar changes to the corresponding sections of the Series 39 examination selection specifications and question bank.

2. Statutory Basis

NASD Regulation believes that the proposed revisions are consistent with the provisions of Sections 15A(b)(6) [13] and 15A(g)(3) of the Act,[14] which authorize the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [15] and Rule 19b–4(f)(1) [16] thereunder, in that the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD Regulation proposes to implement the revised Series 39 examination program on August 1, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

---

[6] The text of the Series 39 study outline is available at NASD Regulation and at the Commission.

[7] NASD Regulation has requested confidential treatment for the Series 39 examination, and thus the specifications are omitted from this filing. The specifications have been filed separately with the Commission pursuant to Rule 24b–2 under the Act. 17 CFR 240.24b–2.

[8] Based upon instruction from the Commission staff, NASD Regulation is not filing the question bank for Commission review. *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

[9] 15 U.S.C. 78o–3(g)(3).

[10] 17 CFR 243.100–103.

[11] 17 CFR 248.1–18; 17 CFR 248.30; and 17 CFR 248, Appendix A.

[12] NASD Rules 1022(b) and 1022(c) were recently amended to require members that are subject to Rule 15c3–1 under the Act to have at least one associated person registered as a financial and operations principal. 17 CFR 240.15c3–1. *See* Securities Exchange Act Release No. 44332 (May 21, 2001), 66 FR 29196 (May 29, 2001) (Order approving SR–NASD–2000–77). In light of these amendments, NASD Regulation believes that it is no longer necessary for an individual who is qualifying as a direct participation programs principal to pass a separately scored substantive section of the examination relating to financial responsibility. Accordingly, NASD Regulation is proposing to combine the substantive section relating to compliance with financial responsibility rules with the other substantive sections and to require one passing score for the entire examination. Additionally, as discussed below, NASD Regulation is proposing to decrease the number of questions in the substantive section relating to compliance with financial responsibility rules to 17 questions from 24 questions.

[13] 15 U.S.C. 78o–3(b)(6).

[14] 15 U.S.C. 78o–3(g)(3).

[15] 15 U.S.C. 78s(b)(3)(A)(i).

[16] 17 CFR 240.19b–4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–50 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10582 Filed 4–29–02; 8:45 am]

BILLING CODE 8010–01–U

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45809; File No. SR–NASD–2002–52]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Revisions to the Limited Representative—Direct Participation Programs (Series 22) Examination Program

April 24, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1)[4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing revisions to the Limited Representative—Direct Participation Programs (Series 22) examination program. The proposed revisions update the Series 22 examination study outline,[6] selection specifications,[7] and question bank[8] to reflect changes to the laws, rules, and regulations covered by the examination and to reflect more accurately the duties and responsibilities of a direct participation programs representative. The proposed revisions do not result in any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD Regulation or the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to Section 15A(g)(3) of the Act,[9] which requires the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, the NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD Regulation periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The Series 22 examination is a limited representative qualification examination for a person associated with a member whose activities in the investment banking and securities business are limited solely to the solicitation, purchase, and/or sale of equity interests in or debt of direct participation programs. A committee of industry representatives, together with NASD Regulation staff, recently undertook a review of the Series 22 examination program. As a result of this review, NASD Regulation is proposing revisions to the Series 22 examination study outline to reflect changes in relevant laws, rules, and regulations covered by the examination, including rules concerning anti-money laundering as well as Regulations FD[10] and S–P,[11] and to reflect more accurately the duties and responsibilities of a direct participation programs representative.

To adequately test the material covered in the revised examination, NASD Regulation is proposing to reorganize the substantive sections of the outline and to allocate questions to each section as follows: Investment Entities for Direct Participation Programs, 12 questions; Types of Direct Participation Programs, 11 questions; Offering Practices Applicable to Direct Participation Programs, 14 questions; Tax Issues Applicable to Direct Participation Programs, 20 questions;

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

[6] The text of the Series 22 study outline is available at NASD Regulation and at the Commission.

[7] NASD Regulation has requested confidential treatment for the Series 22 examination, and thus the specifications are omitted from this filing. The specifications have been filed separately with the Commission pursuant to Rule 24b–2 under the Act. 17 CFR 240.24b–2.

[8] Based upon instruction from the Commission staff, NASD Regulation is not filing the question bank for Commission review. *See* Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

[9] 15 U.S.C. 78o–3(g)(3).

[10] 17 CFR 243.100–103.

[11] 17 CFR 248.1–18; 17 CFR 248.30; and 17 CFR 248, Appendix A.

Regulation of Direct Participation Programs, 32 questions; and Factors to Consider in Evaluating Direct Participation Programs, 11 questions.

NASD Regulation is proposing similar changes to the corresponding sections of the Series 22 examination selection specifications and question bank. The Series 22 examination will remain a 2¼-hour, 100 multiple-choice question examination with 70% as the passing score.

2. Statutory Basis

NASD Regulation believes that the proposed revisions are consistent with the provisions of Sections 15A(b)(6) [12] and 15A(g)(3) of the Act,[13] which authorize the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act [14] and Rule 19b–4(f)(1) [15] thereunder, in that the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD Regulation proposes to implement the revised Series 22 examination program on August 1, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78o–3(g)(3).

[14] 15 U.S.C. 78s(b)(3)(A)(i).

[15] 17 CFR 240.19b–4(f)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–52 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10583 Filed 4–29–02; 8:45 am]

BILLING CODE 8010–01–U

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45810; File No. SR–NASD–2002–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Revisions to the Limited Representative—Private Securities Offerings (Series 82) Examination Program

April 24, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2002, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposed rule change as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) [4] thereunder, which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing revisions to the Limited Representative '' Private Securities Offerings (Series 82) examination program. The proposed revisions update the Series 82 examination study outline,[6] selection specifications,[7] and question bank [8] to reflect changes to the laws, rules, and regulations covered by the examination and to reflect more accurately the duties and responsibilities of a private securities offerings representative. The proposed revisions do not result in any textual changes to the By-Laws, Schedules to the By-Laws, or Rules of NASD Regulation or the NASD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] See Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

[6] The text of the Series 82 study outline is available at NASD Regulation and at the Commission.

[7] NASD Regulation has requested confidential treatment for the Series 82 examination, and thus the specifications are omitted from this filing. The specifications have been filed separately with the Commission pursuant to Rule 24b-2 under the Act. 17 CFR 240.24b-2.

[8] Based upon instruction from the Commission staff, NASD Regulation is not filing the question bank for Commission review. See Letter to Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2000.

summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to section 15A(g)(3) of the Act,[9] which requires the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members, the NASD has developed examinations, and administers examinations developed by other self-regulatory organizations, that are designed to establish that persons associated with NASD members have attained specified levels of competence and knowledge. NASD Regulation periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

The Series 82 examination is a limited representative qualification examination for a person associated with a member whose activities in the investment banking and securities business are limited to effecting sales as part of a primary private securities offering pursuant to Section 3(b), 4(2) or 4(6) of the Securities Act of 1933[10] and the rules and regulations thereunder. The Series 82 examination does not qualify a registered representative to effect sales of municipal or government securities, equity interests in or the debt of direct participation programs, or resales of or secondary market transactions in private placement securities.

A committee of industry representatives, together with NASD Regulation staff, recently undertook a review of the Series 82 examination program. As a result of this review, NASD Regulation is proposing revisions to the Series 82 examination study outline to reflect changes in relevant laws, rules, and regulations covered by the examination, including rules concerning anti-money laundering as well as Regulations FD[11] and S–P,[12] and to reflect more accurately the duties and responsibilities of a private securities offerings representative.

To adequately test the material covered in the revised examination, NASD Regulation is proposing to reorganize the substantive sections of the outline and to allocate questions to each section as follows: Characteristics of Corporate Securities, 13 questions; Regulation of The Market for Registered and Unregistered Securities, 45 questions; Analyzing Corporate Securities, 15 questions; and Handling Customer Accounts and Industry Regulations, 27 questions.

NASD Regulation is proposing similar changes to the corresponding sections of the Series 82 examination selection specifications and question bank. The Series 82 examination will remain a 2½-hour, 100 multiple-choice question examination with 70% as the passing score.

2. Statutory Basis

NASD Regulation believes that the proposed revisions are consistent with the provisions of sections 15A(b)(6)[13] and 15A(g)(3) of the Act,[14] which authorize the NASD to prescribe standards of training, experience, and competence for persons associated with NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[15] and Rule 19b-4(f)(1)[16] thereunder, in that the foregoing proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD Regulation proposes to implement the revised Series 82 examination program on August 1, 2002.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–49 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10584 Filed 4–29–02; 8:45 am]

BILLING CODE 8010–01–U

[9] 15 U.S.C. 78o-3(g)(3).

[10] 15 U.S.C. 77c(b); 15 U.S.C. 77d(2); and 15 U.S.C. 77d(6).

[11] 17 CFR 243.100–103.

[12] 17 CFR 248.1–18; 17 CFR 248.30; and 17 CFR 248, Appendix A.

[13] 15 U.S.C. 78o-3(b)(6).

[14] 15 U.S.C. 78o-3(g)(3).

[15] 15 U.S.C. 78s(b)(3)(A)(i).

[16] 17 CFR 240.19b-4(f)(1).

[17] [17]: 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45812; File No. SR–NFA–2002–01]

Self-Regulatory Organization; Notice of Filing of a Proposed Rule Change by the National Futures Association Relating to Interpretive Notice Regarding NFA Compliance Rule 2–9, Supervision of the Use of Automated Order-Routing Systems

April 24, 2002.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on March 5, 2002, the National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed

[1] 15 U.S.C. 78s(b)(7).

[2] 17 C.F.R. 240.19b–7.

rule change described in Items I, II, and III below, which Items have been prepared by the NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. The NFA has also filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'').

The NFA, on March 1, 2002, submitted the proposed rule change to the CFTC for approval. On March 21, 2002, the CFTC issued a notice and request for comment regarding the proposed rule change.[3] Under Section 19(b)(7)(B) of the Act, the proposed rule change may take effect upon approval by the CFTC.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Act[4] makes the NFA a national securities association for the limited purpose of regulating the activities of NFA members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Act.[5] The proposed Interpretive Notice to NFA Compliance Rule 2–9 Regarding the Supervision of the Use of Automated Order-Routing Systems (''AORSs'') applies to all NFA members who accept orders for futures accounts, regardless of the underlying product and, therefore, will apply to NFA members registered as broker-dealers under Section 15(b)(11) of the Act with regard to their security futures activities.

In November 2000, NFA's Board of Directors—responding to a letter from then CFTC Chairman Rainer—asked its Special Committee to Review Technology (''Special Committee'') to develop standards relating to security, capacity, and controls for AORSs that route orders through a futures commission merchant (''FCM''). The Board also directed the Special Committee to find a middle ground between one-size-fits-all requirements that mandate specific technology and guidelines that are so general as to be meaningless. The proposed Interpretive Notice addresses AORS issues by providing interpretive guidance to NFA members on their supervisory responsibilities over orders entered through those systems.

[3] 67 FR 14701 (March 27, 2002).

[4] 15 U.S.C. 78o–3(k).

[5] 15 U.S.C. 78o(b)(11).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed interpretive notice recognizes that NFA members have a supervisory responsibility to process orders in a reliable and timely manner and to impose credit and risk-management controls on trading done by any particular customer. The notice also recognizes that supervisory standards do not change with the medium used but that how those standards are applied may be affected by technology. Therefore, as the Board directed, the notice tries to achieve a middle ground between one-size-fits-all requirements that mandate specific technology and guidelines that are so general as to be meaningless.

Regarding security, the notice states that NFA members who accept orders must adopt and enforce written procedures reasonably designed to protect the reliability and confidentiality of orders and account information at all points during the order-routing process. To that end, the notice states that NFA members should have procedures regarding authentication of users, encryption of information, firewalls, authorization of users, periodic testing of the AORS's security systems, and who will administer system security.

On the subject of capacity, the notice provides that NFA members who accept orders must adopt and enforce written procedures reasonably designed to maintain adequate personnel and facilities for the timely and efficient delivery of customer orders and reporting of executions. In this regard, the procedures should cover capacity reviews, disaster recovery and redundancies, and advance disclosure to customers of both potential systems problems and alternative procedures for customers to use if problems occur.

In connection with credit and risk-management controls, the notice states that NFA members who accept orders must adopt and enforce written procedures reasonably designed to prevent customers from entering into trades that create undue financial risks for the NFA member or the NFA member's other customers. In particular, the procedures should address pre-execution and post-execution controls and how to determine which controls apply to a particular customer, special considerations for authorizing use of direct access systems, and on going review of the controls imposed.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Act.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act and the Commodity Exchange Act (''CEA''). The Special Committee considered the economic burdens the rule change could impose on smaller entities and attempted to minimize those burdens. In any event, any burdens imposed are necessary and appropriate in order to ensure that customer orders are handled properly.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA sent a notice to all NFA members requesting comments on the proposed interpretive notice. NFA received nine comment letters. NFA's FCM, introducing broker (''IB''), commodity pool operators' (''CPO'') and commodity trading advisors' (''CTA'') Advisory Committees also provided comments. In general:

- All of the commenters except the FCM Advisory Committee supported NFA's efforts to provide guidance to NFA members on their supervisory responsibilities for orders entered through an AORS;
- Several of the commenters questioned the specific approach taken by the proposed interpretive notice, which they interpreted as being overly prescriptive rather than simply providing guidance; and
- Some commenters believed that NFA should not mandate that the supervisory procedures be in writing. Some commenters also felt that it is unnecessary to have procedures covering protections that are already written into an automated system.

[6] 15 U.S.C. 78o–3(k).

• In contrast to the other commenters, NFA's FCM Advisory Committee felt that NFA should not issue interpretive guidance on the use of AORSs. The FCM Advisory Committee believes that decisions regarding AORSs should be a matter of business judgment, not regulation.

Special Committee's Response to Comments

The Special Committee considered all of the comments that it received. Although it recognizes the FCM Advisory Committee's concerns, the Special Committee continues to believe that its mandate from the Board requires it to propose interpretive guidance. The Special Committee also believes, however, that the industry needs guidance and that it is appropriate for NFA to issue it. The Special Committee believes that the interpretive notice provides that guidance by clarifying existing requirements.

As noted above, some of the commenters felt the interpretive notice was too prescriptive. As a general matter, the Special Committee believes that the standards must be clear enough to provide meaningful guidance and ensure that firms can be audited for compliance. The Special Committee did, however, agree with a number of the specific comments that were made and revised the interpretive notice accordingly.

Finally, despite some comments, the Special Committee believes that the supervisory procedures should be in writing. It did, however, add a footnote to clarify that the procedures do not have to contain technical specifications or duplicate procedures that are documented elsewhere.

The Board agreed with the Special Committee's conclusions and adopted the Interpretive Notice as recommended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become effective upon approval by the CFTC. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

[7] 15 U.S.C. 78s(b)(1).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov.* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's Internet website (*http://www.sec.gov*). All submissions should refer to File No. SR–NFA–2002–01 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10579 Filed 4–29–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45793; File No. SR–PCX–2002–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. To Limit the Number of Exchange Memberships That Any Person, Associated Person, or Group of Associated Persons May Own

April 22, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 6, 2002, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[8] 17 C.F.R. 200.30–3(a)(75).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a new rule that would limit to 15% the number of Exchange memberships that any person, associated person, or group of associated persons may own directly or indirectly, without an exemption from the Exchange's Board of Governors (''Board'').

The text of the proposed rule change appears below. New text is in italics.

* * * * *

Rule 1.21(d) No person, associated person or group of associated persons may directly or indirectly beneficially own, or control the voting rights of, more than 15% of the number of authorized memberships of the Exchange unless expressly authorized by the Board through a two-thirds majority of those Governors voting at a meeting at which a quorum is present, provided that such authorization must be approved by not less than a majority of all Governors. In the event that a person, associated person or group of associated persons acquires beneficial ownership of, or control the voting rights of, memberships in excess of this 15% limit as a result of a merger or acquisition of a member firm, then the following will apply: (i) such person, associated person or group of associated persons will not be entitled to exercise any voting rights attached to any memberships in excess of 15% of the number of authorized memberships; and (ii) such person, associated person or group of associated persons must reduce the number of memberships beneficially owned to comply with this Rule within two years.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt new PCX Rule 1.21(d), which would provide that no person, associated person, or group of associated persons may directly or indirectly beneficially own, or control the voting rights of, more than 15% of the number of authorized memberships of the Exchange. However, under the proposed rule change, exceptions to the 15% limit are permitted if they are expressly authorized by the Exchange's Board through a two-thirds majority of those Governors voting at a meeting at which a quorum is present, provided that such authorization must be approved by not less than a majority of all Governors. The Exchange represents that it currently has 552 authorized PCX memberships. Therefore, the seat ownership limit under the proposed rule change would be 82.

The proposed rule change further provides that in the event that a person, associated person, or group of associated persons acquires beneficial ownership of, or controls the voting rights of, memberships in excess of the 15% limit as a result of a merger or acquisition of a member firm, then the following will apply: (i) Such person, associated person, or group of associated persons will not be entitled to exercise any voting rights attached to any memberships in excess of 15% of the number of authorized memberships; and (ii) such person, associated person, or group of associated persons must reduce the number of memberships beneficially owned to comply with this proposed rule within two years.

The Exchange represents that the proposed rule change is intended to assure that the Exchange's memberships do not become unduly concentrated and thereby subject to domination by a particular member or member organization's own interest.

2. Statutory Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,[3] in general, and furthers the objectives of Section 6(b)(3) of the Act[4] in particular, in that it is designed to assure that the Exchange maintains a fair representation of its members in the selection of its directors and administration of its affairs. The Exchange further believes that the proposal furthers the objectives of Section 6(b)(5) of the Act[5] in that it is designed to promote just and equitable principles of trade and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or;

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR-PCX–2002–11 and should be submitted by May 21, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10540 Filed 4–29–02; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(3).

[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

OFFICE OF SPECIAL COUNSEL

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies

AGENCY: United States Office of Special Counsel

ACTION: Draft Report and Guidelines

SUMMARY: The U.S. Office of Special Counsel (OSC) is publishing its draft report to the Office of Management and Budget (OMB), including proposed guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of certain information disseminated by the agency to the public. This draft report is published pursuant to guidelines issued by OMB to federal agencies. See 66 FR 49718 (September 28, 2001) (Final Guidelines, with Request for Comments) and 67 FR 369 (January 3, 2002) (Final Guidelines), as corrected and/or amended at 67 FR 5365 (February 5, 2002), 67 FR 8452 (February 22, 2002), and 67 FR 9797 (March 4, 2002). OMB issued its guidelines under section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554, 114 Stat. 2763). The guidelines call for each agency to develop a draft report to OMB, including agency guidelines designed to ensure the quality, objectivity, utility, and integrity of certain information disseminated by the agency to the public. The draft agency report and guidelines must be published in the Federal Register and posted on the agency's web site by May 1, 2002, for public comment. After reviewing any public comments received, and making any appropriate changes, each agency must send the final draft of its report and guidelines to OMB for review by July 1, 2002. The final agency report and guidelines must be published in the

Federal Register and posted on the agency's web site by October 1, 2002.

DATES: Public comments on the draft OSC report and guidelines published in this notice must be postmarked or sent by electronic mail on or before June 1, 2002, to the addresses provided below.

ADDRESSES: Comments on the draft OSC report and guidelines should be sent by regular mail or electronic mail to the agency's Planning and Advice Division. Comments sent by regular mail should be addressed to: Sharyn Danch, Planning and Advice Division, Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036–4505; comments sent by electronic mail should be addressed to info__quality@osc.gov. All comments received will be included in the official record of this action

FOR FURTHER INFORMATION CONTACT: Sharyn Danch, by mail (Planning and Advice Division, Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036–4505), or electronic mail (info__quality@osc.gov). The draft OSC report and guidelines in this notice are available on the agency's web site, at www.osc.gov (at the ''Reading Room'' link on the home page).

SUPPLEMENTARY INFORMATION: In its guidelines implementing section 515 of Public Law 106–554, OMB provides that each agency should: (1) Develop information resources management procedures and issue quality guidelines to ensure the quality, objectivity, utility and integrity of information disseminated by the agency to the public; (2) establish administrative mechanisms for affected persons to seek and obtain the correction of disseminated information that does not comply with OMB or agency guidelines; and (3) report annually to OMB on requests for correction received by the agency, and the resolution of those requests. OMB advises agencies to use common sense in adapting its guidelines to information disseminated to the public, by reference to the nature and importance of the information involved. Finally, OMB encourages agencies to incorporate standards and procedures required by its guidelines into existing agency information management and administrative practices under applicable laws and OMB circulars.

OSC's draft report to OMB, with proposed agency guidelines, follows:

Report to the Office of Management and Budget On Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminatedby the Office of Special Counsel

Introduction

This report is submitted to the Office of Management and Budget (OMB) by the U.S. Office of Special Counsel (OSC) pursuant to section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554, 114 Stat. 2763), and implementing OMB guidelines. This report includes OSC's proposed ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Special Counsel (OSC).''

Agency Background

OSC is a small (approximately 106 full-time equivalent employees), independent federal investigative and prosecutorial agency. First established in 1979, it became an independent federal agency with enactment of the Whistleblower Protection Act of 1989. Basic OSC authorities and responsibilities are defined at 5 USC 1211, *et seq.*

OSC's primary mission is to safeguard the merit system in federal employment, by protecting current and former federal employees and applicants for federal employment from certain prohibited employment practices, especially reprisal for whistleblowing. The agency also facilitates disclosures (by current and former federal employees and applicants for federal employment) of wrongdoing in the federal government, and enforces restrictions on political activity by covered federal, state, and local government employees. OSC carries out this mission by:

1. investigating complaints of prohibited employment practices, especially reprisal for whistleblowing, and pursuing remedies for violations;
2. perating an independent and secure channel for disclosure and investigation of wrongdoing in federal agencies;
3. providing advisory opinions on, and enforcing, Hatch Act restrictions on political activity by covered federal, state, and local government employees;
4. protecting the rights of veterans under the Uniformed Services Employment and Reemployment Rights Act; and
5. promoting greater understanding of the rights and responsibilities of government employees under the laws enforced by OSC.

Information Disseminated by OSC

OSC maintains an active outreach program that disseminates a variety of information about the agency's jurisdiction, programs, and operations. Primary target audiences for these outreach efforts are current and former federal government employees, applicants for federal employment, employee representatives, and state and local government employees (i.e., persons affected by or interested in the laws and regulations enforced by OSC). OSC uses a variety of tools in these efforts, including the agency web site (at www.osc.gov), brochures, posters, fact sheets, press releases, and provision of agency employees as speakers at training conferences and meetings.

OSC does not usually disseminate information to the public, as such. Press releases are issued by the Special Counsel, but these types of documents are excluded from coverage under the OMB guidelines. Other information is available to the public, primarily by means of the agency web site, but usually as a by-product of dissemination of that information to target audiences, transmittal of reports to Congress and other agencies, publication of regulations and required notices in the Federal Register, and OSC's performance of its statutory duties (e.g., transmittal of reports to the President and Congress on whistleblower disclosures, filing of pleadings in litigation, and congressional testimony). Nevertheless, to the extent that OSC disseminates covered information to the public, agency guidelines will be in place pursuant to Public Law 106–554 and implementing OMB guidelines.

Agency Guidelines

OSC has always maintained high standards of quality in the production of any information to be disseminated outside the agency. The agency information quality guidelines included in this report formally incorporate in writing a basic standard of quality (including objectivity, utility, and integrity) into the development and dissemination by OSC of information to the public. To ensure and maximize the quality, objectivity, utility, and integrity of any such information, the OSC guidelines provide for administrative review by the head of the program unit developing the information, and periodic reviews thereafter to ensure that the information is current. After review by the head of the program unit, the information will also be reviewed by the Deputy Special Counsel, the Special Counsel, or a designated representative before public dissemination.

The guidelines also provide for administrative mechanisms allowing affected members of the public to seek and obtain appropriate correction of information maintained and disseminated by OSC if the information does not comply with OMB or agency guidelines. The mechanisms established by OSC provide for receipt and review of such requests by high-level management officials.

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Special Counsel (OSC)

I. Authority

Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554, 114 Stat. 2763), section 515; Office of Management and Budget guidelines, at 66 FR 49718 (September 28, 2001) (Final Guidelines, with Request for Comments) and 67 FR 369 (January 3, 2002) (Final Guidelines), as corrected and/or amended at 67 FR 5365 (February 5, 2002), 67 FR 8452 (February 22, 2002), and 67 FR 9797 (March 4, 2002).

II. Definitions

Terms used in these guidelines are defined by reference to definitions in OMB guidelines as follows:

1. ''Quality'' includes the utility, objectivity, and integrity of information.

2. ''Utility'' refers to the usefulness of information not only to OSC, but also to its intended users, including the public.

3. ''Objectivity,'' as applied to both presentation and substance, includes whether disseminated information is being presented in an accurate, clear, complete, unbiased manner, in a proper context, and with identification of sources (to the extent possible, consistent with confidentiality protections)

4. ''Integrity'' refers to the security of information (that is, protection of the information from unauthorized access or revision, to ensure that it is not compromised though corruption or falsification).

5. ''Information'' means any communication or representation of knowledge, such as facts or data, in any medium or form, including textual, numerical, graphic, narrative, or audiovisual forms. It includes information disseminated on the OSC web page, but does not include the provision of hyperlinks to information that others disseminate. The term also does not include opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views.

6. ''Dissemination'' means agency-initiated or -sponsored distribution of information to the public (see 5 CFR 1320.3(d) (definition of ''Conduct or sponsor''). Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra- or inter-agency use or sharing of government information; responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act, or other similar law; distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas or adjudicative processes.

7. ''OMB guidelines'' means the ''Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies'' issued by OMB pursuant to section 515 of Public Law 106–554.

III. Summary

These OSC guidelines formally incorporate a basic standard of quality (including objectivity, utility, and integrity) into the development and dissemination of information by the agency to the public. They also include: (1) procedures for reviewing the quality of information before it is disseminated, and for periodically reviewing the information after dissemination to ensure its continuing quality; (2) administrative mechanisms by which affected persons may request, and obtain when appropriate, the correction of information maintained and disseminated by OSC if such information does not conform to OMB or agency guidelines; and (3) procedures for annually reporting to OMB the number and nature of complaints received by OSC about its compliance with OMB guidelines, and how such complaints were resolved.

Pre–dissemination review procedures referred to in item (1) apply to information first disseminated by OSC on or after October 1, 2002. Administrative correction mechanisms referred to in item (2) apply to information disseminated by OSC on or after October 1, 2002, regardless of when OSC first disseminated the information.

Information disseminated to the public by OSC will protect information from or about complainants in prohibited personnel practice matters pursuant to 5 U.S.C. 1212(g); it will also protect information about subjects, witnesses or others, as required or permitted under the Freedom of Information Act, the Privacy Act, and any other applicable law or regulation. OSC does not develop or disseminate specific categories of information cited by OMB that may require higher and more specific quality standards (e.g., scientific, financial or statistical information, and reports prepared by non–governmental entities).

IV. Quality Standards, Administrative Review Procedures, and Administrative Correction Mechanisms

A. Quality Standards

(1) Information should adhere to a basic standard of quality. The quality (including the objectivity, utility, and integrity) of information to be disseminated by OSC to the public should be an integral component in every phase of the development of such information.

(2) Information should be objective in substance and presentation. Accurate, reliable, and unbiased information should be presented in an accurate, clear, complete, unbiased manner, in a proper context, and with identification of sources (to the extent possible, consistent with confidentiality protections). To ensure that the information is objective, it should relate to issues within OSC's jurisdiction, and be based on laws and regulations enforced by the agency or governing its operations, and on its experience in enforcing those laws and regulations.

(3) Information should be responsive to its intended users. Information should meet the needs of its intended users, including the public, with due regard for the costs and benefits involved. Needs of intended users will be determined by OSC, in part, through feedback or frequently asked questions at agency outreach activities, and comments received on the agency web site. At a minimum, information developed and disseminated by OSC should, whenever possible, be written in plain, understandable language.

(4) The integrity of information should be protected. Protecting public information on OSC's web site from unauthorized access or revision is the responsibility of the agency's Information Systems Branch (ISB). In carrying out that responsibility, ISB will: (a) implement applicable new software patches and security guidelines as recommended by the web site developer and by federal agencies responsible for guidance on information security issues; (b) routinely monitor web server event logs to identify potential breaches of security; and (c) maintain backups of web site and web

server content, to permit OSC to promptly restore the site if its security is threatened or the system fails due to hardware or software error.

B. Administrative Review Procedures

The head of the program unit developing information for dissemination to the public is responsible for reviewing its content, and for periodic review of the information to ensure that it is updated to reflect changes in laws and regulations, and recent court decisions. After review by the head of the program unit, such information will be reviewed by the Deputy Special Counsel, the Special Counsel, or a designated representative before dissemination to the public.

C. Administrative Correction Mechanisms

Affected members of the public who believe that information disseminated by OSC does not comply with OMB guidelines or these agency guidelines may contact OSC to request a correction of the information. Such persons (''requesters'') should write to the Deputy Special Counsel, Office of Special Counsel, 1730 M Street, N.W., Suite 201, Washington, DC 20036–4505. The Deputy Special Counsel will refer the request for response to the program unit responsible for development or maintenance of the information. Initial requests should include all relevant information available to the requester, and a clear statement of the alleged conflict with OMB or OSC guidelines. OSC will reject requests made in bad faith or without justification.

OSC will respond to a request within 30 calendar days after its receipt (or sooner, if it is possible to quickly resolve the request and immediate attention is necessary due to the nature of the information). The program unit to which the request has been referred will respond by letter to the requester. The letter will inform the requester whether OSC believes a correction is appropriate given the nature and timeliness of the information involved, and if so, will provide any corrected information.

If the OSC response is not acceptable to the requester, he or she may appeal the initial decision. The requester must send an appeal within 30 calendar days of the date of OSC's response. It should be addressed to the Deputy Special Counsel (at the address shown in the first paragraph of this section), and must state the reason(s) why the initial decision was not acceptable. If OSC believes that other agencies may have an interest in the resolution of an appeal, it will consult with those agencies about their possible interest before completing its review of the appeal.

Within 30 calendar days after OSC receives the appeal, the Deputy Special Counsel will respond by letter informing the requester whether the appeal is granted (that is, the letter will state whether a correction is appropriate given the nature and timeliness of the information involved, and if so, will provide any corrected information).

D. Reporting Procedures

OSC will send an annual report to OMB describing the number and type of complaints received about OSC's compliance with OMB guidelines, and how such complaints were resolved. OSC will submit its initial report by January 1, 2004.

E. Conclusion

The Deputy Special Counsel shall be responsible for ensuring agency compliance with OMB guidelines. These agency guidelines are not intended to create any right or benefit, substantive or procedural, enforceable in any court by a party against OSC, the federal government, or any individual, beyond any that may be established by section 515 of Public Law 106–554 or by implementing OMB guidelines. In particular, these agency guidelines do not impose any additional requirements on OSC during adjudicative proceedings and do not provide parties to such proceedings any additional rights of challenge or appeal.

Dated: April 24, 2002.

Timothy Hannapel,

Deputy Special Counsel.

[FR Doc. 02–10569 Filed 4–29–02; 8:45 am]

BILLING CODE 7405–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2002–11996]

Draft Report Implementing OMB's Information Dissemination Quality Guidelines

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of availability and request for comment.

SUMMARY: The Department of Transportation (DOT) is drafting Departmental guidelines to implement section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554). The Office of Management and Budget (OMB) has issued Government-wide guidelines under Section 515 which direct each Federal agency to establish and implement written procedures to ensure and maximize the quality, utility, objectivity and integrity of the information that they disseminate.

DATES: Comments should be submitted by May 31, 2002.

ADDRESSES: You may file comments using the Internet by logging in on DOT's Dockets Management System (DMS) website at *http://dms.dot.gov*. Please follow the online instructions for submitting an electronic comment and for reviewing all comments on line. Once received, a notification receipt will be forwarded to you. You may fax your comments to the DMS at (202) 493–2251. You may also submit your comments by mail or in person by sending your comments to the U. S. Department of Transportation (DOT), Office of Dockets and Media Management to the Docket Clerk, Docket No. OST–2002–11996, 400 Seventh Street, SW., Room PL401, Washington, DC 20590–0001. If you would like the Department to acknowledge receipt of your written comments, you must include a self-addressed stamped postcard on which the following statement is made: ''Comments on Docket OST–2002–11996.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Comments should identify the docket number. Written comments should be submitted in duplicate.

The Office of Dockets and Media Management is open for examination and copying, at the above address, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. All comments received will be available for inspection at the above address.

Please note that due to current mail security procedures affecting U.S. Postal Service delivery to Government offices, commenters may find it advantageous to use an alternative method (the internet, fax, or professional delivery service) to submit comments to the Docket and ensure their timely receipt at the U.S. Department of Transportation.

FOR FURTHER INFORMATION CONTACT: Vanester M. Williams, Office of the Chief Information Officer, U. S. Department of Transportation; 202–366–1771 (not a toll-free call) or by email at *vanester.williams@ost.dot.gov*. For specific inquiries on the Department's administrative mechanisms for allowing persons to seek correction of information, please contact Robert Ashby, Office of the General Counsel, U. S. Department of Transportation; 202–366–9310 (not a toll-free call) or by email at *bob.ashby@ost.dot.gov*. For specific inquiries on the Department's

statistical guidelines, please contact Dr. Patrick Flanagan, Bureau of Transportation Statistics, U. S. Department of Transportation; 202–366–4168 (not a toll-free call) or by email at *pat.flanagan@bts.dot.gov*.

SUPPLEMENTARY INFORMATION: The Department's information quality guidelines will apply to a wide variety of its information dissemination activities in order to meet basic information quality standards set forth by Section 515. The purpose of these guidelines is to provide a framework under which the Department will allow affected persons an opportunity to seek and obtain correction of information maintained and disseminated by the Department that does not comply with these guidelines. DOT designated the Departmental Chief Information Officer (CIO) as the senior official responsible for DOT compliance with these guidelines. Final guidelines will be effective October 1, 2002.

The written procedures established within DOT's guidelines apply to all organizational components of the Department. For DOT organizations that require additional guidelines, these organizations should implement corresponding procedures that meet the terms of these Departmental guidelines. For the purposes of these guidelines, the term ''DOT organizations'' refer to:

Office of the Secretary (OST)
Bureau of Transportation Statistics (BTS)
Office of the Inspector General (OIG)
Federal Aviation Administration (FAA)
Federal Highway Administration (FHWA)
Federal Motor Carrier Safety Administration (FMCSA)
Federal Railroad Administration (FRA)
Federal Transit Administration (FTA)
Maritime Administration (MARAD)
National Highway Traffic Safety Administration (NHTSA)
Research and Special Programs Administration (RSPA)
Saint Lawrence Seaway Development Corporation (SLSDC)
Transportation Administrative Service Center (TASC)
Transportation Security Administration (TSA)
United States Coast Guard (USCG)

As provided in OMB's guidelines implementing Section 515, the Department is publishing this notice of availability of its draft quality guidelines in the **Federal Register**. The draft guidelines themselves are posted on the Department's DMS website at *http://dms.dot.gov* to provide an opportunity for public comment. We invite comments on all aspects of the guidelines, with emphasis on the following general questions:

1. Are the Department's draft guidelines adequate for ensuring and maximizing the quality, objectivity, utility, and integrity of its disseminated information as set out in OMB's notice of January 3, 2002?

2. Are the Department's procedures for allowing affected persons to seek and obtain correction of information appropriate?

Instructions for filing comments may also be found in the guidelines document posted on the Department's DMS web site. The Department will review all comments submitted in response to its draft guidelines. The comments will be available for public review on the DMS web site.

Issued in Washington, DC, on April 24, 2002.

Eugene K. Taylor, Jr.,

Deputy CIO, U.S. Department of Transportation.

[FR Doc. 02–10575 Filed 4–29–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the twenty-first session of the United Nation's Sub-Committee on Experts on the Transport of Dangerous Goods (UNSCOE) to be held July 1–10, 2002 in Geneva, Switzerland.

DATES: June 18, 2002 1–3:30 pm, Room 6244–6248, July 24, 2002, 9:30 am–12:30 pm, Room 3328.

ADDRESSES: Both meetings will be held at DOT Headquarters, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Bob Richard, International Standards Coordinator, Office of Hazardous Materials Safety, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the twenty-first session of the UNSCOE and to discuss U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will to be provide a briefing on the outcome of the UNSCOE session. Topics to be covered during the public meetings include: (1) Criteria for Environmentally Hazardous Substances, (2) Requirements for the transport of solids in bulk containers including portable tanks, (3) Harmonized requirements for compressed gas cylinders, (4) Classification of individual substances, (5) Requirements for packagings used to transport hazardous materials including a US proposal to require a vibration test, (6) Requirements for infectious substances and genetically modified micro-organisms, (7) Hazard communication requirements including the comprehensibility for the proposed Globally Harmonized System labels, (8) emergency response requirements and (9) Requirements applicable to small quantities of hazardous materials in transport (consumer commodities).

The public is invited to attend without prior notification. Due to the heightened security measures participants are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Documents

Copies of documents for the UNSCOE meeting and the meeting agenda may be obtained by downloading them from the United Nations Transport Division's web site at *http://www.unece.org/trans/main/dgdb/dgsubc/c32002.html.* This site may also be accessed through RSPA's Hazardous Materials Safety Homepage at *http://hazmat.dot.gov/intstandards.htm.* RSPA's site provides information regarding the UNSCOE and related matters such as a summary of decisions taken at the twentieth session of the UNSCOE.

Issued in Washington, DC, on April 24, 2002.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–10573 Filed 4–29–02; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 589]

Calculation of Variable Costs in Rate Complaint Proceedings Involving Non-Class I Railroads

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Surface Transportation Board institutes a proceeding to settle how it will estimate the variable costs of non-Class I railroads in future rate complaint proceedings.

DATES: Comments are due by July 1, 2002. Replies, if any, are due July 31, 2002.

ADDRESSES: Send comments (an original and 10 copies) referring to STB Ex Parte No. 589 to: Office of the Secretary, Case Control Branch, 1925 K Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas J. Stilling, 202–565–1567. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: A user of rail transportation can file a complaint with the Board challenging the reasonableness of a rate charged for common carriage rail transportation. 49 U.S.C. 11701(b). However, the Board may only consider the reasonableness of a challenged rail rate if the carrier has ''market dominance'' over the traffic at issue. 49 U.S.C. 10701(d)(1). The statute precludes a finding of market dominance if the revenue produced by the shipment at issue is less than 180% of the defendant carrier's variable cost. 49 U.S.C. 10707(d)(1)(A). It also specifies that the variable cost calculation be developed ''using the Uniform Rail Costing System [URCS] cost finding methodology (or an alternative methodology adopted by the Board in lieu thereof).'' 49 U.S.C. 10707(d)(1)(B).

Non-Class I railroads, however, have traditionally not been required to maintain the necessary financial and operating data to enable development of variable costs using URCS. Historically, the average regional URCS variable costs for the Class I railroads have been used as a surrogate for a non-Class I carrier's variable costs. However, in *Minnesota Power, Inc.* v. *Duluth, M.&I.R. Ry.*, STB Docket No. 42038, we initially ordered the defendant non-Class I railroad to collect the necessary operational and financial data needed to develop variable cost information using URCS. We later stayed that order in response to a petition for reconsideration, so that we could consider the industry-wide implications associated with the accounting/record-keeping order. Before we ruled on the petition, the parties settled that rate dispute.

The issue of whether, as a general matter, it is appropriate and administratively practical in rate cases involving non-Class I railroads to place a case in abeyance for an extended period of time and to subject a carrier to the expense of developing URCS-compatible data for a single case has therefore not been resolved. In this proceeding, we propose to return to a policy of estimating non-Class I carriers' variable costs using Class I regional average variable costs, and we seek comments of interested parties on this proposal and/or any alternative proposal they may wish to make.

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or visit the Board's contractor, Dā-To-Dā Legal, Suite 405, 1925 K Street, NW., Washington, DC 20006, phone (202) 293–7776. [Assistance for the hearing impaired is available through Federal Information Relay Service (FIRS) at 1–800–877–8339.] The full decision is also available on the Board's website: *www.stb.dot.gov*.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: April 22, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–10473 Filed 4–29–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics; Notice of Meeting

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Notice.

This notice announces, pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the BTS Advisory Council on Transportation Statistics (ACTS). The meeting will be held on Tuesday, May 14, 2002, from 10 a.m. to 4 p.m. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington DC, on the 2nd Floor, in Conference Room 2230 of the Nassif Building.

The ACTS, established under Section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the BTS are of high quality and are based upon the best available objective information.

The following is a summary of the meeting's agenda: (1) Introduction and Director's Report; (2) Reauthorization Update; (3) BTS's 10th Anniversary Celebration; (4) TranStats demonstration; (5) Presentation on the Role of Transportation Statistics in National Security Policy; (6) Update on the BTS Confidentiality Policy; (7) Closing Remarks (Closing comments from ACTS members, discussion and agreement of date(s) and agenda items for subsequent meeting(s) and public comments).

Based on a recent General Services Administration rule (66 FR 37728) amending 41 CFR part 102–3, I am designating Ms. Phyllis Seville as the Committee Management Officer (CMO) and Ms. Laura McClure as Designated Federal Officer (DFO) for the ACTS.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Phyllis Seville, CMO at (202) 366–9510 prior to Friday, May 10, 2002. Individuals attending the meeting must report to the SW. Lobby of the Nassif Building for admission to the building. Attendance is open to the public, but limited space is available. With the approval of the Chair, members of the public may present oral statements at the meeting. Non-committee members wishing to present oral statements or obtain information should also contact Ms. Seville.

Questions about the agenda or written comments may be submitted by U.S. Mail to: U.S. Department of Transportation, Attention: Ms. Laura McClure, Designated Federal Officer, BTS, Room 3103, 400 Seventh St. SW., Washington, DC 20590 or faxed to (202) 366–3640, Attention: Ms. Laura McClure. BTS requests that written comments be submitted prior to the meeting.

Persons with a disability requiring special services, such as an interpreter

for the hearing impaired, should contact Ms. Seville at (202) 366–9510 at least seven calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Service Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on April 24, 2002.

Ashish Sen,

Director, Bureau of Transportation Statistics.

[FR Doc. 02–10574 Filed 4–29–02; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF THE TREASURY

Customs Service

Termination of Test Regarding Importer Compliance Monitoring Program

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The Importer Compliance Monitoring Program (ICMP), which allows interested importers to assess their own compliance with Customs laws and regulations, was developed by Customs under its regulatory audit authority and was implemented on a test basis starting in 1998. Customs has determined that the ICMP test should be discontinued in favor of an updated approach to importer self-assessment. This notice advises the public of the termination of the ICMP test.

DATES: The ICMP test will terminate on May 30, 2002.

FOR FURTHER INFORMATION CONTACT: Russell Ugone, Director, Trade Agreements Branch, Regulatory Audit Division (202–927–0728).

SUPPLEMENTARY INFORMATION:

Background

As a consequence of the passage of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), the primary goal of Customs in the trade compliance process has been to maximize importer compliance with U.S. trade laws while, at the same time, facilitating the importation and entry of admissible merchandise. To meet this goal, Customs has made a comprehensive effort to review, improve, and redesign, on an ongoing basis, the trade compliance process using established business practices, re-engineered tools, and new methodologies that improve customer service without compromising the enforcement aspect of the Customs mission.

In order to enable interested importers to participate in a program that would allow them to assess their own compliance with Customs laws and regulations on a continuing basis, Customs on April 24, 1998, published in the **Federal Register** (63 FR 20442) a notice of a plan to conduct a test regarding the Importer Compliance Monitoring Program (ICMP). The notice stated that the test would involve a limited number of importer participants and would run for a period of one year. On July 23, 2001, Customs published in the **Federal Register** (66 FR 38344) a notice announcing a second test of the ICMP. This notice invited increased importer participation, made some alterations to the earlier ICMP test procedures, and stated that, if Customs determines to end the program test, reasonable notice of the expiration date would be published in the **Federal Register**.

Termination of the ICMP Test

Although the notice announcing the second test of the ICMP was published in part in order to increase the participation in the test, participation has remained below the level envisaged by Customs when the test procedures were developed. Customs therefore has determined that the ICMP test should be discontinued in favor of a new program that continues the self-assessment principles of the ICMP but will be an updated approach using new methodologies. This new program, which is called the Importer Self Assessment Program, will be the subject of a separate notice to be published in the **Federal Register** in the near future.

Accordingly, the ICMP test, as described in the **Federal Register** on July 23, 2001, will terminate 30 days after publication of this notice in the **Federal Register**. All testing procedures, reporting requirements and other obligations assumed by importers by virtue of their participation in the ICMP test, and all benefits accruing to importers as a result of their participation in the ICMP test, will cease to apply upon termination of the ICMP test. However, importers are reminded that termination of the ICMP test has no effect on an importer's continuing obligation to comply with all applicable Customs laws and regulations.

Dated: April 24, 2002.

Cynthia A. Covell,

Director, Regulatory Audit Division.

[FR Doc. 02–10560 Filed 4–30–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Northland Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 24 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001, at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6507.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35049, July 2, 2001.

With respect to any bonds currently in force with above listed Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782.

Dated: April 18, 2002.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–10518 Filed 4–29–02; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2002–27

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 Notice 2002–27, IRA Required Minimum Distribution Reporting.

DATES: Written comments should be received on or before July 1, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: IRA Required Minimum Distribution Reporting.

OMB Number: 1545–1779.

Notice Number: Notice 2002–27.

Abstract: Notice 2002–27 provides guidance with respect to the reporting requirements, that is, data that custodians and trustees of IRAs must furnish IRA owners in those instances where there must be a minimum distribution from an individual retirement arrangement.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 78,000.

Estimated Average Time Per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 1,170.000.

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; © 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: April 24, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–10614 Filed 4–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209798–95]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning a final regulation, REG–209798–95 (TD 8746), Amortizable Bond Premium, (Reg. Sections 1.163–13, 1.171–4, and 1.171–5).

DATES: Written comments should be received on or before July 1, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (Allan.M.Hopkins@irs.gov), Internal Revenue Service, room 6407, 1111 Constitution AvenueNW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Amortizable Bond Premium.

OMB Number: 1545–1491.

Regulation Project Number: REG–209798–95.

Abstract: This regulation addresses the tax treatment of bond premium. The regulation provides that a holder may make an election to amortize bond premium by offsetting interest income with bond premium, and the holder must attach a statement to their tax return providing certain information. The regulation also provides that a taxpayer may receive automatic consent to change its method of accounting for premium provided the taxpayer attaches a statement to its tax return. The information requested is necessary for the IRS to determine whether an issuer or a holder has changed its method of accounting for premium.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 30 min.

Estimated Total Annual Burden Hours: 50,000.

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: April 24, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–10615 Filed 4–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–264–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning final regulation, PS–264–82 (TD 8508), Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders. (Regulation §§ 1.1367–1(f), 1.1368–1(f), 1.1368–1(g)).

DATES: Written comments should be received on or before July 1, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov),* Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders.

OMB Number: 1545–1139.

Regulation Project Number: PS–264–82.

Abstract: The regulation provides the procedures and the statements to be filed by S corporations for making the election provided under Internal Revenue Code section 1368, and by shareholders who choose to reorder items that decrease their basis. Statements required to be filed will be used to verify that taxpayers are complying with the requirements imposed by Congress.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 6 min.

Estimated Total Annual Burden Hours: 200 hours.

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: April 24, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–10616 Filed 4–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Recruitment Notice for the Citizen Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: Notice for recruitment of IRS Citizen Advocacy Panel Members.

DATES: April 26–May 24, 2002.

FOR FURTHER INFORMATION CONTACT: Mike Lewis at 1–202–622–3068

SUPPLEMENTARY INFORMATION: Notice is hereby given the Department of Treasury is expanding the IRS Citizen Advocacy Panel (CAP) to all fifty states to provide independent recommendations to improve IRS service and customer satisfaction. The first pilot Citizen Advocacy Panel (CAP) was established in the South Florida District on June 23, 1998. In 2001, the Citizen Advocacy Panel expanded to a total of ten states including Florida, Metro New York, Midwest (Iowa, Nebraska, Wisconsin and Illinois) and Pacific Northwest (Alaska, Hawaii, Oregon and Washington). The IRS is accepting applications for membership for the nationwide expansion between April 26 and May 24, 2002. The panels will become operational in the Fall of 2002.

The mission of the Citizen Advocacy Panel is to listen to taxpayers, advocate their concerns and provide input for improving IRS service and customer satisfaction. The Panel's sub-committees

will consist of 10–17 volunteer members and will function as an advisory body to the IRS.

The Panel is seeking applicants who have an interest in good government, a personal commitment to volunteer approximately 100 to 300 hours a year, and a desire to help improve IRS service and customer satisfaction. Panel membership should represent a cross-section of the taxpaying public throughout the United States. Potential candidates must be US citizens, compliant with Federal, State and Local taxes, and pass a FBI check.

For the Citizen Advocacy Panel to be most effective, members should have experience in some of the following areas: experience helping people resolve problems with a government organization; experience formulating and presenting proposals; knowledge of taxpayer concerns; experience representing the interests of your community, state or region; experience working with people from diverse backgrounds; and experience helping people resolve disputes. Interested applicants should call either toll free number, 1–888–912–1227 or 1–866–602–2223, and request an application package. Completed applications will be reviewed, tax background checks and FBI checks will be conducted, and panel interviews will be conducted with the most qualified candidates. Final candidates will be ranked by experience and suitability. The Secretary of the Treasury will review the recommended candidates and make final selections.

Questions regarding the expansion and selection of the Panel may be directed to Michael Lewis, Office of the Assistant Secretary for Management and Chief Financial Officer, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 2421, Washington, DC 20220, (202) 622–3068.

Dated: April 23, 2002.

Ann Junkins,

CAP Program Director.

[FR Doc. 02–10613 Filed 4–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

VA Research Misconduct Policy

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Intent to Adopt Federal Research Misconduct Policy.

SUMMARY: On December 6, 2000, the Office of Science and Technology Policy (OSTP), Executive Office of the President, published a notification of a final Federal Policy on Research Misconduct (Federal Policy) (65 FR 76260). That policy set forth a definition of ''research misconduct'' and provided basic guidelines for responding to allegations of misconduct for all federally funded research and proposals for such research. Federal agencies that conduct or support research, including the Department of Veterans Affairs (VA), are required to implement the Federal Policy within one year of the policy's issuance (12/6/00).

The VA hereby publicizes its intent to adopt the Federal Policy on Research Misconduct with respect to all research subject to VA approval. Operational implementation of the Federal Policy will be effected by revising relevant, internal VA procedures to conform to the requirements of the Federal Policy. The VA's internal, research misconduct policies and procedures will be fully consistent with and circumscribed by the Federal Policy. Therefore, to the extent that the Federal Policy was published in the **Federal Register** subject to notice and comment requirements, no additional substantive policies affecting the public will be created by the VA's internal, research misconduct policies and procedures.

These policies and procedures will apply only to allegations of research misconduct as defined herein. Other ''research improprieties'' are handled according to separate, extant VA policies and procedures.

FOR FURTHER INFORMATION CONTACT: Peter Poon, Health Science Specialist, Office of Research Compliance and Assurance, 811 Vermont Ave., NW., (10R), Suite 574, Washington, DC 20420, (202) 565–8107.

SUPPLEMENTARY INFORMATION: The VA's internal, research misconduct policies and procedures will be fully consistent with and circumscribed by the Federal Policy.

I. *Research Misconduct Defined.* Under VA policies and procedures, the definition of ''research misconduct'' will strictly adhere to that of the Federal Policy. Moreover, the component terms ''fabrication'', ''falsification'', ''plagiarism'', and ''research'' shall be defined as by the Federal Policy.

II. *Findings of Research Misconduct.* The Federal Policy standard for making a finding of research misconduct will be adopted by the VA. Specifically, a finding of research misconduct will require that:

- There be a significant departure from accepted practices of the relevant research community; and
- The misconduct be committed intentionally, or knowingly, or recklessly; and
- The allegation be proven by a preponderance of evidence.

III. *Responsibilities of the VA and Local Research Facilities Conducting VA Research.* Local VA Medical Centers (VAMCs) and their affiliates that conduct VA research will bear primary responsibility for the prevention and detection of research misconduct within their own facilities and conducting inquiries and investigations when required. However, the VA's Office of Research Compliance and Assurance (ORCA), through one of its Regional Offices (RO), may conduct its own inquiry or investigation for reasons specified in the Federal Policy. Further clarification on the roles and responsibilities of the VAMCs and VA Central Office will be set forth in appropriate VA directives and guidelines.

IV. *Fair and Timely Procedures.*

- *Safeguards for Informants.* VA policies and procedures will include provisions for protecting informants who make good faith allegations of research misconduct to appropriate authorities or who cooperate in good faith with inquiries or investigations of research misconduct.
- *Safeguards for Respondents.* VA policies and procedures will include provisions for protecting the rights of those who are the subject of research misconduct allegations, including timely notification, reasonable access to the data and other evidence supporting the allegations, and the opportunity to respond to allegations, evidence, and proposed findings of research misconduct (if any).
- *Objectivity, Fairness, and Expertise.* VA policies and procedures will include provisions for ensuring objectivity, fairness, and expertise in the review of allegations.
- *Timeliness.* VA policies and procedures will include provisions establishing reasonable time limits for the conduct of the inquiry, investigation, adjudication, and appeal phases (if any), with allowances for appropriate extensions.
- *Confidentiality during the Inquiry, Investigation, and Decision-Making Process.* VA policies and procedures will place limits on public disclosure of the identity of respondents and informants consistent with a fair and thorough investigation and as allowed by law.

V. *VA Administrative Actions.* The VA will consider the seriousness of the misconduct in deciding what administrative actions are appropriate. If it believes that criminal or civil fraud violations may have occurred, the VA

will promptly refer the matter to the Inspector General for the VA.

Dated: April 23, 2002.

(Authority: 65 FR 76260)

Anthony J. Principi,

The Secretary of Veterans Affairs.

[FR Doc. 02–10596 Filed 4–29–02; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
April 30, 2002

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et. al.

Hazardous Materials Regulations; Compatibility with the Regulations of the International Atomic Energy Agency; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 174, 175, 176, 177 and 178

[Docket No. RSPA–99–6283 (HM–230)]

RIN 2137–AD40

Hazardous Materials Regulations; Compatibility With the Regulations of the International Atomic Energy Agency

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to amend requirements in the Hazardous Materials Regulations (HMR) pertaining to the transportation of radioactive materials based on changes contained in the International Atomic Energy Agency (IAEA) publication, entitled ''IAEA Safety Standards Series: Regulations for the Safe Transport of Radioactive Material,'' 1996 Edition, No. TS–R–1. The purpose of this rulemaking initiative is to harmonize requirements of the HMR with international standards for radioactive materials as well as to promulgate other DOT-initiated requirements.

DATES: Comments must be received by July 29, 2002.

ADDRESSES: Address comments to the Dockets Unit, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW., Washington, DC 20590–0001. Comments should identify the docket number RSPA–99–6283 (HM–230) and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. You may also submit comments to the docket electronically by accessing the Dockets Management System website at ''*http://dms.dot.gov*.'' Click on ''Help & Information'' to obtain instructions for filing the document electronically. The Dockets Unit is located on the Plaza Level of the Nassif Building at the U.S. Department of Transportation at the above address. Public dockets may be reviewed between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except on Federal holidays. Internet users may access all comments received by the U.S. Department of Transportation at *http://dms.dot.gov*. An electronic copy of the document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

FOR FURTHER INFORMATION CONTACT: Dr. Fred D. Ferate II, Office of Hazardous Materials Technology, (202) 366–4545, or Charles E. Betts, Office of Hazardous Materials Standards, (202) 366–8553; RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

CONTENTS

I. Background.
II.Proposed Changes in this NPRM
A. Summary
A. Issue Discussion
Issue 1: Nuclide-Specific Exemption Values
Issue 2: Naturally Occurring Radioactive Materials
Issue 3: Changes in A_1 and A_2 Values
Issue 4: Communication Changes
Issue 5: Low Specific Activity (LSA) materials and Surface Contaminated Objects (SCO)
Issue 6: Uranium Hexafluoride (UF_6)
Issue 7: Air Transport Requirements
Issue 8: Fissile Material Package and Transport Requirements
Issue 9: Transitional Requirements
Issue 10: Additional TS–R–1 Change
III. Section-By-Section Review
IV. Regulatory Analyses and Notices
A. Executive Order 12866 and DOT Regulatory Polices and Procedures
B. Executive Order 13132
C. Executive Order 13175
D. Regulatory Flexibility Act
E. Paperwork Reduction Act
F. Regulation Identifier Number (RIN)
G. Unfunded Mandates Reform Act
H. Environmental Assessment

I. Background

In 1958, at the request of the Economic and Social Council of the United Nations, the IAEA undertook the development of international regulations for the safe transportation of radioactive materials. The initial regulations published by the IAEA in 1961 were recommended to member states as the basis for national regulations and for application to international transportation. Most nations have since adopted the IAEA regulations as a basis for regulations governing the transportation of radioactive materials.

In 1967, after extensive revisions, the IAEA published its regulations entitled ''Regulations for the Safe Transport of Radioactive Material, Safety Series No. 6.'' In October 1968, DOT published amendments to the Hazardous Materials Regulations (Title 49, Code of Federal Regulations, Parts 171–180; HMR) for radioactive materials which were in substantial conformance with the 1967 IAEA regulations (Docket HM–2, 33 FR 14918).

Based on work done by participants from member states, including the U.S., the IAEA issued two major updates of Safety Series No. 6 in 1973 and 1985. On March 10, 1983, the Research and Special Programs Administration (RSPA, we) published a final rule (Docket HM–169, 48 FR 10218), bringing the HMR requirements relating to the transportation of radioactive materials into alignment with the 1973 IAEA regulations. On September 28, 1995, we published a final rule (Docket HM–169A, 60 FR 50291) that revised the radioactive materials requirements in the HMR to align them with the 1985 revision of Safety Series No. 6. In each case, we coordinated the HMR revisions with the Nuclear Regulatory Commission (NRC), which concurrently revised 10 CFR part 71, and in each case these revisions made the United States radioactive material transport regulations compatible with those of most other industrialized nations.

In 1996, the IAEA revised and issued IAEA Safety Standards Series No. ST–1, (''ST–1''). IAEA subsequently revised ST–1 in June 2000 to include minor editorial changes and renamed it ''TS–R–1.'' In this Notice, we use the nomenclature ''TS–R–1'' to refer to the 1996 IAEA ''Regulations for the Safe Transport of Radioactive Material.'' Copies of TS–R–1 may be obtained from the U. S. distributor, Bernan Associates, 4611–F Assembly Drive, Lanham, MD 20706–4391, telephone (301) 459–7666.

As in past rulemakings to incorporate updates of the international regulations into the HMR, we are working in close cooperation with NRC in the development of this rulemaking. Currently, DOT and NRC jointly regulate the transportation of radioactive material in the United States in accordance with a July 2, 1979, Memorandum of Understanding (MOU; 44 FR 38690). In accordance with this MOU (a copy of which has been placed in the docket of this rulemaking):

1. DOT regulates both shippers and carriers and has issued:

- Packaging requirements;
- Communication requirements for:

—Shipping paper contents,
—Package labeling and marking requirements, and
—Vehicle placarding requirements;

- Training and emergency response requirements; and
- Highway routing requirements.

2. NRC requires its licensees to satisfy requirements to protect public health and safety and to assure the common defense and security, and:

• Certifies Type B and fissile material package designs and approves package quality assurance programs for its licensees;

• Provides technical support to DOT and works with DOT to ensure consistency with respect to the transportation of radioactive materials; and

• Conducts inspections of licensees in accordance with DOT requirements.

This rulemaking is being coordinated by RSPA with NRC to ensure that consistent regulatory standards are maintained for radioactive material transportation regulations, and to ensure coordinated publication of rules by both agencies. This NPRM addresses only the areas over which DOT has jurisdiction as defined in the MOU. Comments on non-DOT issues or on DOT issues not in the scope of this rulemaking will not be addressed in this NPRM. Comments responding to the NRC's parallel NPRM should be submitted directly to the NRC through its rulemaking process.

On December 28, 1999 (64 FR 72633), we published an advance notice of proposed rulemaking (ANPRM) requesting comments from interested persons concerning the extent to which differences between the HMR and the IAEA publication TS–R–1 should be considered in proposing changes to the HMR. We identified a partial list of TS–R–1 requirements being considered for incorporation in the HMR. We invited interested persons to review and comment on any or all of the requirements in TS–R–1 that differ from current HMR requirements and identify related issues we should address in the NPRM. In response to the ANPRM, we received approximately 80 written comments from trade associations, hazardous materials consulting firms, chemical manufacturers, radiopharmaceutical manufacturers, shippers and carriers of hazardous materials, and private citizens.

In addition, we compared TS–R–1 to the previous version of Safety Series No. 6 to identify changes made in TS–R–1, and then identified affected sections of the HMR. Based on this comparison and comments received from the ANPRM, we identified ten issues where increased compatibility between the HMR and TS–R–1 appears to be desirable.

On February 1, 2000, we published a final rule under Docket HM–215D (66 FR 8644), in which we adopted the International Maritime Dangerous Goods (IMDG) Code, 2000 edition, including Amendment 30–00 and the UN Recommendations on the Transport of Dangerous Goods, Eleventh Revised Edition (1999), both of which authorize the use of TS–R–1. We published a final rule on June 21, 2001 (66 FR 33315), which provided that TS–R–1 could be used, as an alternative to the HMR, for international shipments or radioactive materials. Additionally, we retained Safety Series No. 6 with the same restrictions. Under this final rule, domestic shipments remain subject to the HMR requirements that are based on Safety Series No. 6. This NPRM will address the adoption of TS–R–1 for domestic use.

This rulemaking will not propose any security related changes to the HMR. As a result of the terrorist incidents of September 11, 2001, and subsequent threats related to biological materials, we are reviewing the HMR to determine if additional requirements are necessary to assure the security of hazardous materials in transportation. We initiated a rulemaking project to address security issues related to the transportation of hazardous materials by all modes. We are examining hazard communication, shipping documentation, training, and other requirements to determine if rulemaking action is necessary.

II. Proposed Changes in This NPRM

A. Summary

We have identified ten major issues concerning adoption of TS–R–1 requirements, which are discussed in detail in Section B of this preamble. In addition, Section B also contains the analysis of comments.

For incorporation into the HMR this NPRM proposes to:

• Adopt the nuclide-specific exemption activity concentrations and the nuclide-specific exemption consignment activities listed in TS–R–1 to assure continued consistency between domestic and international regulations for the basic definition of radioactive material;

• Provide an exception in the HMR that certain naturally occurring radioactive materials would not be subject to the requirements of the HMR so long as their specific activities do not exceed 10 times the activity concentration exemption values;

• Incorporate the TS–R–1 changes in the A1 and A2 values into the HMR;

• Adopt the new proper shipping names and UN identification numbers, except for those referring to Type C packages, to fissile LSA material and to fissile SCOs;

• Require, if customary units are used, that the appropriate quantity and customary units be placed within parentheses positioned after the original quantity expressed in the International System of Units (SI units);

• Adopt the use of the Criticality Safety Index (CSI) to refer to what was formerly the criticality control transport index, and to restrict the use of the concept of transport index (TI) to a number derived purely from the maximum radiation level at one meter from the package;

• Require the new fissile label be placed on each fissile material package, and that the CSI for that package be noted on the fissile label;

• Adopt the requirement that excepted packages be marked with the UN identification number, that industrial packagings be marked with the package type, and that Type IP–2 and IP–3 industrial packages and Type A packages be marked with the international vehicle registration code of the country of origin of packaging design;

• Remove some former requirements which would become redundant upon adoption of the new proper shipping names, such as the requirement that the shipping description contain the words ''Radioactive Material'' unless those words are included in the proper shipping name;

• Remove plutonium-238 from the definition of fissile material. Remove the reference to Pu-238 in the list of fissile radionuclides for which the weight in grams or kilograms may be listed instead of or in addition to the activity, in the shipping paper or radioactive label description of the radioactive contents of a package;

• Adopt a definition of contamination, and include an authority to transport unpackaged LSA material and SCO, and an authority to use qualified tank containers, freight containers and metal intermediate bulk containers as industrial packagings, types 2 and 3 (IP–2 and IP–3);

• Adopt the new class of LSA–I material, consisting of radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the activity concentration exemption level, and to remove the present category referring to mill tailings, contaminated earth, concrete, rubble, other debris, and activated material that is essentially uniformly distributed, with specific activity not exceeding 10^{-6} A_2/g.

• Incorporate the TS–R–1 changes for packagings containing more than 0.1 kg of UF_6;

• Authorize the use of the 1993 edition of ISO 7195 as an alternative to ANSI N14.1, to require UF_6 packagings to meet the pressure, drop and thermal test requirements, to prohibit the use of pressure relief devices, and to certify the packagings in accordance with TS–R–1 requirements;

• Revise § 173.453 to reflect the NRC ''fissile material exemption provisions,'' to remove the definition of ''fissile material, controlled shipment,'' and to revise § 173.457 and § 173.459 to remove the references to ''fissile material, controlled shipment'' and to base requirements for non-exclusive use and exclusive use shipments of fissile material packages on TS–R–1 package and conveyance CSI limits;

• Accept the IAEA transitional requirements and begin the phase out of packages satisfying the 1967 IAEA requirements, including DOT specification packages;

• Require that manufacture of all Type B specification packages conforming to Safety Series No. 6 (1967) be prohibited as of the effective date of this rule and that use of these packages be prohibited two years after the effective date of this rule; and

• Add a requirement that the active material in an instrument or article intended to be transported in an excepted package be completely enclosed by the non-active components.

B. Issue Discussion

Issue 1: Nuclide-Specific Exemption Values

Background. The HMR currently use a specific activity threshold of 70 Bq/g (0.002 μCi/g) for defining a material as radioactive for purposes of transportation (see definition of radioactive material in § 173.403), and radioactive material is not subject to the requirements of the HMR if its specific activity is equal to or below this value. The total activity per gram of all radionuclides present in a material is considered; *i.e.*, if a chain of radionuclides is present, the material is regulated if the sum of the activities/gram of all radionuclides in the chain is 70 Bq/g or more.

We use a threshold specific activity to determine the applicability of regulatory requirements because all material contains some level of radioactivity, although often in trivial amounts. In order not to regulate as radioactive material everything that is transported, it is necessary to specify what materials should be regulated in transport. The threshold value of 70 Bq/g has been thought by the international regulatory authorities to be sufficiently low as to present a negligible risk to transport workers or to members of the public from the radioactive nature of the material.

In issuing TS–R–1, IAEA decided to replace the 70 Bq/g specific activity or activity concentration threshold with values that may be different for each radionuclide. In addition, TS–R–1 establishes threshold values for the total activity in a consignment, below which the risk is so small that the material could be transported without being subject to transportation regulatory requirements. These threshold values for specific activity and activity in a consignment are termed ''exemption values'' in TS–R–1. According to paragraph 236 of TS–R–1, ''radioactive material,'' *i.e.*, radioactive material that is considered radioactive for purposes of transport, is defined as the subset of radioactive material for which both the specific activity and the consignment activity are greater than the exemption values.

The principles upon which the determination of the exemption values is based are that:

(a) The radiation risks to individuals caused by the exempted practice or source are sufficiently low as to be of no regulatory concern;

(b) The collective radiological impact of the exempted practice or source is sufficiently low as to not warrant regulatory control under the prevailing circumstances; and

(c) The exempted practices and sources are inherently safe, with no appreciable likelihood of scenarios that could lead to a failure to meet the criteria in (a) and (b).

The members of IAEA in deliberations leading to the adoption of Safety Series No. 115, ''International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources,'' IAEA, Vienna (1996) (also known as BSS), agreed to adopt exemption values for activity concentrations and total activities related to practices involving radioactive materials and to sources of radioactive material in fixed facilities. In accordance with ''Radiation Protection-65: Principles and Methods for Establishing Concentrations and Quantities (Exemption Values) Below Which Reporting is not Required in the European Directive,'' by M. Harvey *et al.,* Commission of the European Communities Doc. XI–028/93, 1993, each exemption value was selected to be the lesser of:

(a) That at which a member of the critical group, under defined models (representative scenarios, including guiding assumptions) for practices and sources, would receive an effective dose of 10 μSv (1 mrem) in a year under normal conditions; or

(b) That for which the collective dose to all persons exposed to those practices and sources in a year for normal conditions is 1 person-Sv (100 person-rem).

The BSS calculations used three scenarios: (1) Normal use in the workplace, (2) an accident in the workplace where the probability of an exposure due to the accident was taken into account, and

(3) exposure to the public as the result of disposal in a public landfill. Criteria (a) and (b) were applied to all scenarios considered. Criterion (a) was used with all scenarios to determine initial BSS exemption values. The collective dose criterion (b) was also applied, but found not to affect the results.

The BSS calculation also incorporated two other criteria. One was an annual limit of 50 mSv (5 rem) to the skin of an individual. The other was that the exemption level would be chosen to assure that in the case of an accident, even in pessimistic situations, a dose limit of 1 mSv (100 mrem) would not be exceeded.

In principle, the BSS exemption values assure that, for exempt practices and sources within practices at fixed facilities, no member of the public would likely receive an annual dose greater than 10 μSv (1 mrem). In practice, however, since about 300 radionuclides are involved, the values obtained were simplified by rounding to powers of 10, such that calculated xxx values between 3×10^{x} and $3\times10^{x+1}$ would be replaced in the BSS tables by $1\times10^{x+1}$. By determining the exemption values for each radionuclide so that they correspond to a single annual dose of 10 μSv (1 mrem), the calculations assure, within the uncertainty of the models employed, that the use of each radionuclide at its specific activity or total activity exemption value level will involve roughly the same small risk, since radioactivity is regulated under the assumption that the risk is proportional to the dose received. The rounding process used reduces that uniformity in risk, although it should be emphasized that the risks among which those variations occur are still small.

Because the BSS exposure scenarios and pathways do not explicitly address the transport of radioactive material, during the development of TS–R–1 additional calculations were performed for 20 commonly transported radionuclides. The calculations considered transport scenarios consisting of a subset of the BSS scenarios thought to be pertinent to transportation and additional transport-specific scenarios [A. Carey *et al.,* ''The Application of Exemption Values to the Transport of Radioactive Materials,'' Final Report, CEC Contract CT/PST6/1540/1123 (September 1995). The calculations were originally performed for presentation at the Fourth Technical

Committee Meeting on the Revision of the IAEA Regulations for the Safe Transport of Radioactive Material, Vienna, 25–29 September, 1995, at the request of SAGSTRAM–XI (11th Meeting of the IAEA Standing Advisory Group on the Safe Transport of Radioactive Material, TC–407.9, 6–10 March, 1995). Synopses of this report may be found in: ''The Application of Exemption Values to the Transport of Radioactive Materials,'' by P. Francois *et al.*, Proceedings of the 11th International Conference on the Packaging and Transportation of Radioactive Materials (PATRAM '95), Las Vegas, NV, Vol. I, p. 462 (1995); and ''The Application of Exemption Values to the Transport of Radioactive Materials,'' by P. Francois *et al.*, Proceedings of the IRPA 9 Conference, Vienna, Vol. 4, p. 674 (1996).].

For purposes of the calculations, it was first shown that at the current threshold activity concentration of 70 Bq/g, under the transport-derived scenarios, 14 of the 20 radionuclides considered were predicted to result in an annual individual dose greater than 1 mrem with 4 resulting in doses greater than 1 mSv (100 mrem); the highest was Th-232N (Th-232 in secular equilibrium with its decay products), with a predicted dose of about 2.3 mSv (230 mrem). Of the six radionuclides with annual doses less than 1 mrem, S–35 had the lowest dose, about 0.02 μSv (0.002 mrem). The average annual dose for these 20 nuclides was about 0.50 mSv (50 mrem). When the calculations were reversed, to find what activity concentration for each nuclide would result in an annual dose of 10 μSv, the necessary threshold activity concentrations ranged from 0.3 Bq/g for Th-232N to 36,000 Bq/g for S–35.

The same conditions used for fixed facilities were applied to the transport exemption value calculations for the 20 nuclides, namely that a member of the public (including transport workers, since the objective is to estimate the dose they might receive if they were not subject to the transportation regulations) receive no more than about 10 μSv (1 mrem) per year, and that the annual collective dose be no greater than 1 person-Sv (100 person-rem). The main purpose of this analysis was to check the adequacy, with regard to the dose criteria, of the BSS exemption values in the case of exposure situations associated with transport. SAGSTRAM–XI accepted that if the exemption values provided by the analysis of transport scenarios differed by no more than one to two orders of magnitude, then it would be preferable to directly apply the BSS exemption values to the transport regulations, instead of defining a separate set of exemption values for transportation, in order to provide consistency with other practices. The results of the analysis of transport scenarios did in fact result in exemption values that did not differ from the BSS values by more than two orders of magnitude, with the exception of one radionuclide, Kr-85, for which it was argued that because Kr-85 is not transported in such large containers the scenarios used were overly conservative. On this basis it was decided to utilize the BSS exemption values for the transport regulations. For those radionuclides in the transport regulations not listed in the BSS, transportation exemption values were calculated using the BSS methodology.

Because of the rounding procedure used to obtain the BSS values and the differences between the BSS- and transport-derived exemption values even without rounding, the annual individual doses derived using the transport scenarios combined with the BSS exemption activity concentrations for the 20 nuclides considered are no longer equal to 10 μSv (1 mrem). A rough calculation, assuming strict proportionality between the annual dose and the transport-derived activity concentration exemption values, indicates that those calculated doses, using the BSS values in TS–R–1 for the 20 nuclides, now range (except for Kr-85, which gave an anomalously high value) from about 3 μSv (0.3 mrem) for C–14 to about 420 μSv (42 mrem) for Au-198. If Kr-85 is included, the estimated annual dose to a transport worker transporting one of these 20 radionuclides at the TS–R–1 exemption activity concentrations, averaged over these 20 radionuclides, is about 230 μSv (23 mrem).

There are some nuclides listed in Table I of TS–R–1 that contain a reference to footnote (b). These nuclides have the radiological contributions from their listed decay products, assumed to be in secular equilibrium with the initial radionuclide in the decay chain (activities of all members in the chain assumed equal, taking into account branching ratios), already included in the footnoted exemption value. For example, Sr–90 has a TS–R–1 exemption activity concentration of 100 Bq/g. This means that one may transport up to 100 Bq/g of Sr–90, which is equivalent to up to 200 Bq/g of Sr–90 combined with its decay product Y–90, before becoming subject to the regulations for transporting radioactive material.

Discussion. Commenters to the 1999 ANPRM who address this issue generally do not support a change in the HMR definition of ''radioactive material.'' One commenter who supports the change states that requiring materials to meet both the concentration criteria and the consignment activity level to be classed as Class 7 (radioactive) material adds much needed flexibility to the rules and suggests that this revision would be of great value, particularly for research institutions that frequently need to transfer small quantities and low concentrations of radioactive materials.

Among commenters who oppose the IAEA revisions, several state that the use of radionuclide-specific concentration and total consignment exemption thresholds to determine whether a material is to be considered ''radioactive'' for purposes of transport would require substantial additional effort with few, if any, benefits. Other comments note that the current definition of radioactive material has served the United States well for several decades and assert that the benefits to be derived from a risk-based system that spans 7 orders of magnitude are not significant when compared to the simplicity of the current system.

Another commenter states that the new IAEA thresholds will create problems with the transportation of consumer products since the new thresholds would result in varying points at which the regulations would apply, depending on the material.

Many commenters who addressed this issue as part of the HM–215D rulemaking [Docket No. RSPA–2000–7702] state that the TS–R–1 revised definition of radioactive material lowers the level of safety provided by the current regulations, because under TS–R–1 some of the exemption activity concentrations are higher than the current 70 Bq/g.

Several commenters suggest combinations of the current and proposed radioactive material definitions, such as using the TS–R–1 approach for international shipments while retaining the 70 Bq/g threshold for domestic shipments or adopting the new specific activity exemption values only in those cases where the new values are greater than 70 Bq/g and retaining the 70 Bq/g threshold for the remainder.

RSPA believes that the improved risk basis for the proposed exemption values and the advantages of harmonization with the international radioactive material transport regulations outweigh the benefits of the current more simple system. The proposed activity concentration exemption values distribute the risk to workers and

members of the public more equitably, around a value corresponding to an annual dose of approximately 230 μSv (23 mrem). This should be compared with the situation using the single activity concentration threshold of 70 Bq/g, which for the same 20 radionuclides distributes the risk around a value corresponding to an annual dose of about 500 μSv (50 mrem).

We agree that the new system is more complex. However, for most manufactured products the determination of whether those products fall under the domain of the HMR need be made only once or very occasionally. For those cases where there is more variation in the specific activity of the consumer product, such as might be the case for products manufactured from ores containing small amounts of naturally occurring radioactive material, the types of radioactive material which may be present are relatively well known, and it will usually be possible to set up a standard procedure for determining whether the product is subject to the HMR. It should be kept in mind that with the current 70 Bq/g threshold such determinations are also necessary.

Because some proposed exemption concentrations are greater than the current value of 70 Bq/g, it might be argued that in these cases we are proposing to ''lower the level of safety.'' However, the increase in risk in these cases is in a range where the risk is very small. For P–32, for example, the increase in exemption level from 70 Bq/g to the BSS threshold of 1,000 Bq/g results in an increase of the risk for a worker transporting this material without being subject to the HMR from a value corresponding to 0.58 mrem/y up to a value corresponding to 8.3 mrem/y. For comparison purposes, it was mentioned earlier in this section that for the 20 nuclides to which the transport and fixed facility scenarios were first applied, the original threshold of 70 Bq/g corresponds to an average annual dose of about 50 mrem, while use of the BSS exemption activity concentrations adopted in TS–R–1 corresponds to an average annual dose of about 23 mrem. Thus, use of the proposed exemption values will reduce the overall risk by about 50%.

We prefer not to adopt a combination approach to defining radioactive materials in which different exemption values would apply to international and domestic shipments, since doing so would tend to make the proposed system still more complex, and lead us away from the goal of harmonization.

Accordingly, we propose to adopt the nuclide-specific exemption activity concentrations and the nuclide-specific exemption consignment activities listed in TS–R–1. These would be listed in a new section (§ 173.436). The purpose of adopting the TS–R–1 exemption values would be to assure continued consistency between domestic and international regulations for the basic definition of radioactive material. In addition, adoption of the TS–R–1 exemption values would reduce and make more uniform the risk to transport workers and members of the public when radioactive material is transported at levels below the exemption values, where these materials would not be regulated as radioactive. Adoption of these values would provide a consistent level of protection for all radionuclides and would result in a single regulatory structure valid for both domestic and international shipments, thus reducing the potential for error in classifying the material for shipment, reducing costs for those entities that ship domestically and internationally, and increasing regulatory efficiency. Since shippers who have materials with radioactivity near the exemption levels currently need to know what radionuclides and activity levels are present in order to determine compliance with the 70 Bq/g threshold, the primary changes that would be needed when using the nuclide-specific exemption values would be those introduced to apply the sum rules for mixtures, and possible changes in computer software, recordkeeping, training, and other mostly administrative requirements. We believe that the cost savings associated with the enhanced regulatory efficiency due to having common domestic and international criteria for classifying material for shipment, and with thus facilitating the goal of consistency between countries with respect to future modifications of the regulations, outweigh the additional costs resulting from applying the new procedures.

As described under Issue 2, certain naturally occurring radioactive materials with activity concentrations or activities up to 10 times the exemption values, which are not extracted for their radioactive properties, would be excluded from these regulations in order to avoid regulating large amounts of these materials which have not heretofore been subject to radioactive material transport regulations. Since, however, for some radionuclides 10 times the exemption activity concentrations will not be the same as the present 70 Bq/g threshold, some currently unregulated naturally occurring radioactive materials will fall under the scope of the regulations, and some materials which were formerly regulated because they had a specific activity slightly greater than 70 Bq/g, may no longer be regulated. The former situation would lead to some additional costs for the companies involved; however, that would be at least partially offset by reduced costs for shipping those materials in the latter category. Commenters did not provide details or numbers to aid in estimating the magnitude of the projected costs or cost savings, or who would be affected.

Issue 2: Naturally Occurring Radioactive Materials

An important addition to the list of circumstances in TS–R–1 under which the regulations do not apply is found in paragraph 107(e) of that document. That paragraph excludes certain naturally occurring radioactive materials from being regulated during transportation. The purpose of the exclusion is to take into account practical difficulties that result from reducing the exemption concentrations for several alpha emitters from the present level of 70 Bq/g (0.002 μCi/g) in conjunction with the adoption of nuclide-specific exemption values (see the discussion under Issue 1).

Certain of these radionuclides, such as natural uranium and natural thorium, are widespread in nature and found in almost all ores, such as coal, phosphate, gypsum, or a large variety of metals or other minerals. Application of the new exemption values to the radioactive material in these ores would result in bringing under the scope of the regulations enormous amounts of material that have until now not been subject to those regulations, and whose specific activity level presents a very low hazard.

On the other hand, there are ores in nature where the specific activity concentration is much higher than the exemption values, and the regular transport of these ores may require the use of the radiation protection measures inherent in applying the regulations. Thus, for low specific activity ores not intended to be processed for use of those radionuclides, a threshold of 10 times the exemption values provides an appropriate balance between the need for radiological controls at higher concentrations and the practical problems associated with over-regulation which would arise for large quantities of material with low specific activity concentrations of naturally occurring radionuclides.

Discussion. Commenters to the ANPRM generally agree that the HMR should be revised to incorporate the scope limitations of TS–R–1.

Commenters state that this would remove HMR controls from consumer commodities, such as smoke detectors, and radioactive material that is an integral part of the packaging, such as casks with depleted uranium shielding. (We note that this is not necessarily a valid argument for incorporating the cited scope limitation since, for example, materials used in smoke detectors are not usually naturally occurring, and uranium in depleted uranium shielding would have been originally mined for its radioactive properties. In addition, such materials are usually found to be in quantities above ten times the proposed exemption values.) Commenters further state that, since these items are inherently safe, they should be removed from the scope of the HMR. Several commenters state that any change to the scope should ensure that materials regulated as ''radioactive'' for transportation purposes does not extend to ores and natural materials, including products made from those ores and materials, that are outside the nuclear fuel cycle and do not exceed an appropriate regulatory threshold and, thus, present a very low hazard.

Several commenters suggest that a provision to allow radiation protection personnel to carry excepted quantities of solid radioactive material on passenger aircraft as checked baggage should be added to allow radiation protection personnel to travel to a site with appropriate radiation detection equipment without the worry that they are in violation of the HMR. These commenters assert that this provision would have a very direct benefit to public health protection and since the quantities involved are far below the A_1 or A_2 limits, the risk would not be significant. We note that the HMR currently permit carriage aboard an aircraft of a limited quantity of radioactive material, or an instrument or article containing radioactive material, meeting the requirements of § 173.421 or § 173.424, in checked baggage. This was formally stated in a letter issued on March 19, 1991, from the Federal Aviation Administration Director of the Office of Civil Aviation Security Operations to the Director of State Programs of the U.S. Nuclear Regulatory Commission. Therefore, we do not agree that a specific regulatory provision is necessary.

One commenter asserts that there is no significant safety or economic impact from the application of the graded approach to performance standards described in paragraph 106 of TS–R–1. The commenter expresses support for the incorporation of the three severity levels (routine, normal and accident conditions of transport) to determine the level of regulation required by the HMR. The HMR are designed as to assure that the severity of regulatory requirements is proportional to the hazard of the materials to be transported. TS–R–1 and several previous revisions of the IAEA regulations refer to the industrial and Type A package performance requirements, found in 49 CFR 173.465, as ''tests for demonstrating ability to withstand normal conditions of transport,'' and the additional performance requirements for Type B and fissile material packages, found in 10 CFR 71, as ''tests for demonstrating ability to withstand accident conditions of transport.'' We believe that the distinction made in TS–R–1 between routine (incident free) and normal (minor mishaps) is artificial, and does not enhance the use of the graded approach.

Finally, one commenter suggests that language in the regulations should be simplified and clarified, rather than further complicated, to ensure understanding by various segments of the distribution network with a wide range of educational levels. This commenter states that TS–R–1 uses several terms, the definition and application of which are unclear and vulnerable to subjective interpretation. Examples include ''worker,'' ''appropriate training,'' ''unlikely to exceed,'' ''appropriate records,'' and ''regularly occupied working areas.'' This commenter suggests that, due to the extensive interface between transport of radioactive materials and sites subject to NRC, Agreement State, and other nuclear regulatory agency jurisdiction, the definition and application of terms should be clarified and consistent between TS–R–1 and the regulations of these other agencies, and should be consistent with international regulations. We agree. In this NPRM we have attempted to reduce the number of undefined terms, and to add or modify definitions where appropriate.

Accordingly, in this NPRM we are proposing to provide an exception in the HMR, in § 173.401, that naturally occurring radioactive materials not intended to be processed for their radioactive components and with activity concentration not to exceed ten times the exemption activity concentrations would not be subject to the requirements of the HMR.

Issue 3: Changes in A_1 and A_2 Values

Background.

The international and domestic transportation regulations use calculated activity values for each radionuclide to specify the amount of radioactive material that is permitted to be transported in particular packaging and for other purposes. These numbers, known as the A_1 and A_2 values, indicate the maximum activity that is permitted to be transported in a Type A package. For example, A_1 is the maximum activity of radioactive material in special form, and A_2 is the maximum activity in non-special form that may be transported in a Type A package. A_1 and A_2 values for the most commonly transported radionuclides are listed in 49 CFR 173.435, and in Appendix A to 10 CFR 71.

A_1 and A_2 values for most of the commonly transported radionuclides were provided in the 1973 IAEA Safety Series No. 6, and were based on certain dosimetric models and the assumption of certain exposure scenarios and pathways. These models and scenarios were extended and improved in the 1985 Safety Series No. 6, where the calculation procedure was called the ''Q-system.'' This resulted in changes in the A_1 and A_2 values listed there. More recent biokinetic data and dosimetric models have been used to update the Q-system and the resulting A_1 and A_2 values in the 1996 TS–R–1.

To determine whether a given amount of radioactive material may be shipped in a Type A package, or if a Type B package must be used instead, the total activity to be shipped is compared directly with the appropriate A_1 or A_2 value. Fractions or multiples of the A_1 and A_2 values are also used for several other purposes, such as specifying Type B package activity leakage limits, low specific activity and excepted package limits, and determining whether a given amount of radioactive material constitutes a Highway Route Controlled Quantity.

Based on the results from the updated Q-system (see TS–G–1.1, Appendix I), IAEA has adopted new A_1 and A_2 values for radionuclides listed in TS–R–1 (see paragraph 201 and Table 1 of TS–R–1). IAEA adopted these new values based on calculations that were performed using the latest dosimetric models recommended by the International Commission on Radiological Protection (ICRP) in Publication 60, ''1990 Recommendations of the ICRP.'' A thorough review of the Q-system also included incorporation of data from updated metabolic uptake studies. In addition, several refinements were introduced in the calculation of contributions to the effective dose from each of the pathways considered. The pathways themselves are the same ones considered in the 1985 version of the Q-system, i.e., external photon dose;

external beta dose; inhalation dose; skin and ingestion dose from contamination; and dose from submersion in gaseous radionuclides. The impact of these analyses is that for each radionuclide a thorough up-to-date radiological assessment has been performed of potential exposures to an individual should a Type A transport package of radioactive material be involved in an accident during transport. The new A_1 and A_2 values reflect that assessment.

While the dosimetric models and dose pathways within the Q-system were thoroughly reviewed and updated, the reference doses that the model uses were unchanged. The reference doses are the dose values that are used to define a ''not unacceptable'' dose in the event of an accident. Consequently, while some revised A_1 and A_2 values are higher and some are lower, the potential dose following an accident is the same. The revised dosimetric models are accepted internationally as more accurate ways of calculating the doses from individual nuclides, and this improvement in accuracy and the additional refinements in the pathways calculations result in various changes to the A_1 and A_2 values. In other words, where an A_1 or A_2 value has increased, the potential dose is still the same—the use of the revised dosimetric models merely illustrates that a higher activity of that radionuclide is actually required to produce the same reference dose. Conversely, where an A_1 or A_2 value has decreased, the revised models show that less activity of that nuclide is needed to produce the reference dose. Many A_1 and A_2 values have been adjusted to reflect more recent dosimetric data; in general, the adjustments are not large.

Some radionuclides for which A_1 and A_2 values are presently listed in 49 CFR 173.435 and Appendix A of 10 CFR 71 do not appear in Table I of TS-R–1. These are Ar-42, Au-196, Es-253, Es-254, Es-254m, Es-255, Fm-255, Fm-257, Ho-163, Ir-193m, Nb-92m, Po-208, Po-209, Re-183, Te-118, and Tm-168. All except the Einsteinium (Es) and Fermium (Fm) isotopes appear in Safety Series No. 6, 1985 Edition; the latter (Es and Fm) isotopes were appended to the tables in DOT's and NRC's domestic regulations when these incorporated the 1985 IAEA regulations. Through an oversight, numerical A_1 and A_2 values were never entered for Es-255. The above nuclides were not included in TS-R–1 Table I because of uncertainties in their decay schemes and/or the biological models used to determine doses from internal exposures (Dr. K. Eckerman, Oak Ridge National Laboratory).

Discussion. Several commenters to the ANPRM support the new A_1 and A_2 values in general, but request retention of the present A_2 value of 20 Ci for domestic shipments of Mo-99, citing an increase in the needed number of shipments with consequent greater radiation exposure to workers and greater costs as probable consequences of eliminating the present 20 Ci domestic exception. We note that the A_2 value for Mo-99 in TS–R–1 is 0.6 TBq (16.2 Ci), compared to 0.5 TBq (13.5 Ci) in Safety Series No. 6, 1985 Edition. Upon further review of these comments, and of similar comments received and analyzed during the incorporation of Safety Series No. 6, 1985 Edition changes into the HMR (60 FR 50292), we are proposing to continue to allow this domestic exception of 0.74 TBq (20 Ci) for the A_2 value of Mo-99.

A major manufacturer and a major user of californium-252 (Cf-252) neutron sources oppose any proposal that would reduce the A_1 quantity for Cf-252 from its present value of 0.1 TBq (2.7 Ci) to 0.05 TBq (1.35 Ci). One commenter states that reducing the A_1 limit for Cf-252 is not justifiable based on potential radiation exposure rates, and emphasizes that the physical and chemical forms of the californium sources are such that this material, if released, is insoluble in water and will not burn in air, and that this was not taken into account in the Q-system calculations. This commenter asserts that Cf-252 is shipped in Type A packages, and that the costs of designing, qualifying and using Type B packages for sources that will continue to have an activity no greater than 0.1 TBq (2.7 Ci) are much higher and not necessary. This commenter additionally states that using a special form Type A limit which is one half the previous value would double the number of shipments, thereby increasing the risk of transport damage and increasing the potential of exposure of transport workers to radiation. The commenter further states that the company has a substantial investment in the design and construction of Type A packages for transporting Cf-252 in the 0.05 to 0.1 TBq range, and that a general purpose unit for shipping 5 mg (0.1 TBq) of Cf-252 weighs several tons. Changing to the TS–R–1 A_1 value would render these packages unusable. The company estimates that its costs for dismantling and disposing of these packages, which may contain activated metallic parts and would have to be treated as potentially radioactive material, to be on the order of $500,000, not counting the high additional costs required to design, construct, test, and obtain certification for new Type B containers.

During analysis of these comments, RSPA and NRC staff members learned that the IAEA is proposing, for the 2003 revision of TS–R–1, to change the A_1 and A_2 values in TS–R–1 for Cf-252 back to the values currently in the HMR. For this reason we decided to include in this rulemaking a domestic exception to the TS–R–1 Cf-252 A_1 and A_2 values, retaining the present Title 49 A_1 and A_2 values for domestic shipments. Import and export shipments, however, would be subject to the TS–R–1 A_1 and A_2 values.

Other commenters are supportive of the proposed adoption of the new A_2 activity limits. One commenter, who will be moving large quantities of radioactive waste (especially LSA and SCO) as result of environmental cleanup, sites (or facilities) closures, and waste repository operations, states that adopting the new A_2 values will increase the waste shipping volume per conveyance. As a result, the transportation costs will decrease and the number of packagings required will be reduced.

In this NPRM, we propose to incorporate the TS-R–1 A_1 and A_2 values into the HMR, in § 173.435, with the exceptions noted above for Mo-99 and Cf-252. There are two principal arguments for adopting the new values: One is the need to continue to assure the safety of workers and the public, taking into account the latest scientific analyses. The other is the need for harmonization with the international regulations in this area. This harmonization would eliminate the complexities resulting from having to move back and forth between two already complex A_1 and A_2 systems, and the resultant increased probability of inadvertent errors from doing so. In addition, retaining the current values, which are essentially those from Safety Series No. 6, 1985 Edition, would in most cases not be scientifically justifiable, since the new values were introduced in TS–R–1 precisely in order to take into account advancements in scientific knowledge.

In this NPRM, we propose to not include A_1 and A_2 values for the 16 isotopes described above which are listed in our present domestic regulations, but which do not appear in TS–R–1. This means that the default A_1 and A_2 values in TS-R–1 would have to be used for these isotopes. However, DOT regulations at § 173.433(b) provide a mechanism for obtaining approval from the Associate Administrator for Hazardous Materials Safety to use convincingly documented values of A_1

and A_2 for radionuclides not listed in the table in § 173.435. We propose in this NPRM to include a similar mechanism to obtain approval for use of non-default exemption values for these radionuclides.

Issue 4: Communication Changes

Background. The TS–R–1 revisions in hazard communication includes the following:

- Proper shipping names and UN identification numbers are changed (Table VIII in TS-R–1);
- UN identification numbers now must be marked on excepted packages (paragraph 535), and package type, international vehicle registration code (the letters USA in the case of the U.S.) and packaging manufacturer now must be marked on all industrial and Type A packages (paragraph 537);
- Radionuclide activities must be expressed in SI units (paragraphs 543 and 549);
- The former criticality transport index (criticality TI) for fissile material has been abolished, and replaced with the CSI (paragraph 218); TI is now derived exclusively from the maximum radiation dose rate at one meter from the package (paragraphs 243, 526, 527); and
- For fissile material, a fissile label is introduced, upon which the CSI must be displayed (Figure 5, paragraphs 544, 545). Industrial packagings are to carry the markings TYPE IP–1, TYPE IP–2 or TYPE IP–3 as appropriate (paragraph 537).

Discussion. Several commenters note that changing proper shipping names will require all shipments to be re-labeled. One commenter states that the majority of labels that would be affected are metal and pop-riveted directly onto the container, requiring major work to replace these labels with no net safety benefit. These commenters further assert that many preprinted shipping papers will be affected and request a grandfathering or transition period to update the paperwork to reflect the new names.

We agree that there would be definite and sometimes appreciable costs associated with the change to the use of new proper shipping names and UN identification numbers. However, those who import or export radioactive material, as well as those who offer for transportation such material domestically to air carriers operating under the Technical Instructions for the Safe Transport of Dangerous Goods by Air of the International Civil Aviation Organization (ICAO), must necessarily use the new shipping names and UN numbers as of ICAO's implementation of the TS–R–1 requirements effective July 1, 2001. In addition, in order to accommodate domestic and international air transport of radioactive material in accordance with the ICAO Technical Instructions as well as domestic transport by other modes in accordance with the present requirements of Title 49, and to permit the use in transport by those other modes of packages which had been marked with the new names and numbers for air transport, the final rule adopted under docket HM–215D authorizes the use for all modes of either the previous proper shipping names and UN numbers or the new ones. Thus, many shippers are already required to use the new names and numbers or are doing so voluntarily. Morever, since these transition arrangements are likely to remain in place until the effective date of the final rule that is expected to result from this NPRM, there should be ample time to implement the proposed changes.

Several commenters supported the adoption of the new package labeling requirements to provide information on the CSI. Commenters state that the CSI provides essential information relevant for proper separation of packages with fissile material contents during their storage and stowage. Commenters further state that there would be a one-time operational impact and cost of incorporating the new FISSILE label. One commenter estimates this one-time cost to their operation to be a few million dollars that would include personnel training; procedure revisions; and package, overpack and container labeling. Commenters request a five-year transition period to allow for the use and depletion of existing label inventories and to develop, manufacture and obtain new labels prior to the implementation date. We agree that there will be an appreciable but not major one-time impact and a minor ongoing impact of using the new FISSILE labels for shippers of fissile material, but that the simplicity and improvement in safety that will result from distinguishing the CSI from the TI fully justifies this proposal. The use of existing label inventories should not be a problem, since we are proposing no change to existing labeling requirements. There should be sufficient time between the publication date and the effective date of a final rule to obtain the new FISSILE labels, particularly since these labels are already required for most international fissile material shipments.

Several commenters oppose the new excepted package marking requirements in TS–R–1. They assert that current HMR do not require exterior marking of excepted packages, and suggest that the addition of the UN identification number with the letters ''UN'' would do little to enhance the understanding of the contents of excepted packages or the safety of individuals responding to excepted package incidents. They further state that the addition would more likely confuse carriers and end users.

We are aware of the sometimes appreciable initial costs, and the change of culture that placing the UN identification numbers on excepted packages would entail. However, we do not agree that this addition will confuse carriers and end users, nor that it would do little to enhance the understanding of package contents. Possible confusion should be minimal, since carrier personnel are required to receive appropriate training in accordance with subpart H of Part 172. The addition of the UN identification numbers would indicate to first responders in an accident that packages containing small quantities of radioactive material are present. By referring to the DOT Emergency Response Guidebook, in the use of which all first responders are required to be trained, appropriate remedial measures can be taken. Also, as in the case of other TS–R–1 requirements, those who import or export commercial items in excepted packages, as well as those who offer for transportation such items domestically using air carriers who operate under the ICAO Technical Instructions, are currently required to mark the UN identification numbers on those packages, so that the harmonization of our requirements with those of TS–R–1 in this respect seems indicated. On balance, the benefits of adopting this requirement outweigh the disadvantages.

Commenters to the ANPRM generally oppose adoption of any new requirements that would require the placarding of all vehicles engaged in the transportation of radioactive materials labeled RADIOACTIVE WHITE–I, RADIOACTIVE YELLOW–II, or RADIOACTIVE YELLOW–III. Currently, the HMR require the placarding of vehicles transporting YELLOW–III labeled packages of radioactive materials, or certain exclusive use shipments of LSA materials or SCO. Commenters representing radiopharmaceutical shippers and carriers state that requiring all radioactive material shipments to be placarded would result in adverse operational and financial impacts on nuclear pharmacies and radiopharmaceutical distribution in the United States by requiring these

facilities to employ only driver personnel with commercial driver's licenses, who generally command higher salaries. These commenters assert that the established safety record for transporting RADIOACTIVE WHITE–I and RADIOACTIVE YELLOW–II labeled packages in the United States does not justify a tightening of the regulations for local transportation of these packages to hospitals and clinics. These commenters suggest that the increased cost of running a program encompassing some 500 nuclear pharmacies throughout the United States would be immense without any improvement in safety.

We agree with these comments, which can be extended to the transport of other relatively low levels of radioactive material; therefore, we propose no change to the current policy of requiring RADIOACTIVE placards only on vehicles carrying packages with RADIOACTIVE YELLOW–III labels, or on certain exclusive use vehicles transporting LSA or SCO, as described in proposed § 173.427.

Accordingly, in this NPRM we are proposing to adopt, in § 172.101, the new proper shipping names and UN identification numbers, except for those referring to Type C packages, or to fissile LSA or SCO materials. They are not needed, since we do not propose to adopt the concept of Type C packages for domestic use (see Issue 7), and fissile material (above the level considered fissile-excepted) may not be transported domestically as LSA material or SCO.

We do not propose to make any substantial change with respect to the use of SI units to describe activity or radiation levels. Part 172 currently requires the use of SI units or SI units followed by the appropriate quantity in ''customary'' units; it is our position that this does not violate the TS–R–1 requirement, facilitates communication and reduces the possibility of errors for domestic shipments, while promoting familiarity with the use of the SI system. We do propose to require in §§ 172.203(d) and 172.403(g), if customary units are to be used, that the appropriate quantity and customary units be placed within parentheses positioned after the original quantity expressed in SI units.

We also propose to adopt the use of the CSI to refer to what was formerly the criticality control transport index, and to restrict the use of the concept of TI to a number derived purely from the maximum radiation level at one meter from the package. In conjunction with this, we propose that the new fissile label be placed on each fissile material package, and that the CSI for that package be noted on the FISSILE label. This would make it obvious that the package is carrying fissile material, and would reduce the complexity of the system presently in use, in which for packages of fissile materials the transport index is determined through a comparison between a number related to radiation levels and another determined on the basis of a criticality analysis. It would also simplify decisions as to how many packages can be grouped together, since under the proposed system the description of radiation and criticality hazards would be uncoupled, and during transport each hazard can be considered separately.

We propose to adopt the requirement that excepted packages be marked with the UN identification number, that industrial packagings be marked with the package type, and that industrial and Type A packages be marked with the international vehicle registration code of the country of origin of packaging design.

We propose to remove some former requirements which would become redundant upon adoption of the new proper shipping names, such as the requirement that the shipping description contain the words ''Radioactive Material'' unless those words are included in the proper shipping name.

Because the isotope plutonium-238 has been removed from the TS–R–1 definition of fissile material (see the discussion for Issue 9), we propose to remove it from our definition of fissile material in § 173.403, and to remove the reference to it in the list of fissile radionuclides for which the weight in grams or kilograms may be listed instead of or in addition to the activity, in the shipping paper or radioactive label description of the radioactive contents of a package.

We propose to improve readability and clarity of the HMR by moving the labeling requirements for overpacks to subpart E of part 172, and by stating explicitly that the Class 7 label category for an overpack is to be determined using the maximum surface radiation level on the interior package(s) unless the overpack is the appropriate package type for its contents.

Issue 5: Low Specific Activity (LSA) Materials and Surface Contaminated Objects (SCO)

Background. On September 28, 1995, in a final rule, published under Docket, HM–169A (60 FR 50292), we attempted to refine the existing LSA and SCO regulations by adopting complementary, but not additional, features of the LSA and SCO provisions of the IAEA regulations. This approach was considered best because it offered minimal changes to existing requirements while facilitating international transport consistent with IAEA regulations. Shortly after implementing this new regulatory program, we recognized the shortcomings of not adopting all the provisions, such as the Safety Series No. 6 definition of contamination.

IAEA TS–R–1 proposed a new class of LSA–I material (paragraph 226), consisting of radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the activity concentration exemption values. The purpose of this category is to allow shipment as LSA–I of very low specific activity materials containing one or more of a variety of radionuclides.

Discussion. In response to the ANPRM, commenters agreed that we should adopt a definition of contamination that is consistent with the one used in TS–R–1. Due to the insufficient availability of industrial packages, significant volumes of material that would have to be repackaged and the lack of a significant safety benefit, many commenters support continued use of strong, tight packages for transport of LSA and SCO material. Commenters also suggest that due to minimal risk but large size or volume of many shipments of LSA and SCO, provisions for unpackaged material are appropriate and necessary.

One commenter requests that we retain the present LSA–I classification in § 173.403 which refers to mill tailings, contaminated earth, concrete, rubble, other debris, and activated material in which Class 7 (radioactive) material is essentially uniformly distributed and the average specific activity does not exceed 10^{-6} A_2/g. We do not agree. We propose to replace this classification with the new TS–R–1 classification of other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the activity concentration values. The present LSA–I classification does not provide an equivalent level of safety to the exemption-based classification from TS–R–1 which we are proposing to adopt.

In this NPRM, we are proposing to simplify the HMR by bringing them into closer harmony with the TS–R–1 by adopting a definition of contamination, an authorization to transport unpackaged LSA and SCO, and an

authorization to use qualified tank containers, freight containers and metal intermediate bulk containers as industrial packagings, types 2 and 3 (IP–2 and IP–3). We also propose to adopt a new class of LSA–I material (paragraph 226), consisting of radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the activity concentration exemption value. We believe that incorporating these changes will greatly simplify LSA and SCO regulations by bringing them into closer harmony with the TS–R–1. Specifically, we believe that the addition of a contamination definition and the authority to transport unpackaged LSA and SCO will better focus the regulations on radioactive material that truly poses a hazard to persons, property and the environment. We also believe the authorization to use qualified tank containers, freight containers and metal intermediate bulk containers as industrial packagings and the other packaging changes made for LSA and SCO would greatly simplify the HMR with no increase in risk.

We also propose to eliminate present paragraph § 173.427(d), which when offered for transportation for disposal or recovery by means other than aircraft, excepts from all requirements of the HMR for Class 7 materials LSA material and SCO that conform to the provisions of 10 CFR 20.2005. Such material is 1.85 kBq (0.05 μCi) or less of H–3 or C–14 per gram of liquid scintillation counting medium or of animal tissue. These exceptions would no longer be needed if the TS–R–1 exemption values are adopted, since the TS–R–1 exemption activity concentrations are 1×10^6 Bq/g (27 μCi/g) for H–3 and 1×10^4 Bq/g (0.27 μCi/g) for C–14. Note, however, that this does not necessarily mean that these materials would be exempt from the provisions of the HMR relating to other hazard classes.

Issue 6: Uranium Hexafluoride (UF^6)

Background. Current regulation for uranium hexafluoride (UF_6) packaging and transportation is a combination of NRC and HMR requirements. The HMR contain provisions that govern many aspects of UF^6 packaging and shipment preparation, including a requirement that the UF_6 material be packaged in cylinders that meet the ANSI N14.1 standard. NRC regulates fissile materials and Type B packaging designs for all materials. Since UF_6 is a fissile material, it is also regulated by NRC.

Previous editions of the IAEA regulations did not specifically address UF_6, but TS–R–1 contains detailed requirements for UF6 packagings designed for more than 0.1 kg UF_6. First, TS–R–1 requires the use of the International Organization for Standardization (ISO) Standard 7195, ''Packaging of Uranium Hexafluoride (UF_6) for Transport,'' instead of the ANSI N14.1 standard, with the condition that approval by all countries involved in the shipment is obtained (i.e., multilateral approval (Paragraph 629)). Second, TS–R–1 requires that all packages containing more than 0.1 kg UF_6 must meet the ''normal conditions of transport'' drop test, a minimum internal pressure test and the hypothetical accident condition thermal test (Paragraph 630). However, TS–R–1 does allow a competent national authority to waive certain design requirements, including the thermal test for packages designed to contain greater than 9,000 kg UF_6, provided that multilateral approval is obtained. Third, TS–R–1 prohibits use of packages utilizing pressure relief devices (Paragraph 631). Fourth, TS–R–1 includes a new exception for UF_6 packages, regarding the evaluation of a single package. This new exception (Paragraph 677(b)) allows UF_6 packages to be evaluated without considering the in-leakage of water into the containment system if the packages satisfy certain specified conditions. Under these conditions, a single fissile UF_6 package does not have to be shown to be subcritical under the assumption that there is water inside the containment system. This provision only applies when there is no contact between the valve and any other component of the cylinder under hypothetical accident tests and the valve remains leak-tight following the thermal test, and when there is a high degree of quality control in the manufacture, maintenance, and repair of packagings coupled with tests to demonstrate closure of each package before each shipment.

There are specific performance and design requirements for packages containing uranium hexafluoride (paragraphs 629–632), including conformance with ISO Standard 7195, ''Packaging of Uranium Hexafluoride (UF_6) for Transport.'' Competent Authority package design certificates are required for international shipments of uranium hexafluoride (paragraph 828).

Discussion. Although many commenters to the ANPRM do not agree with the need or basis of the changes, most of the commenters do agree that we should adopt them to facilitate international transportation of UF_6. Commenters asked for the following information to be included in the HMR: (1) Clarification of the requirements for new cylinders, cleaned cylinders, and cylinders containing residual amounts of UF_6 (heel cylinders); (2) additional details regarding approval provisions; and (3) transitional or grandfathering provisions. We agree with the need for additional information and are proposing to include all of what was requested. We also recommend that shippers and carriers of UF_6 consult with IAEA Safety Guide TS–G–1.1, ''Advisory Material for the IAEA Regulations for the Safe Transport of Radioactive Material,'' for further clarification.

Accordingly, in this NPRM we are proposing to incorporate the TS–R–1 changes for packagings containing more than 0.1 kg of UF_6. RSPA also proposes to authorize the use of the 2001 edition of ISO Standard 7195 as an alternative to ANSI N14.1, to require the packagings to meet the pressure, drop and thermal test requirements found in paragraphs 629–632; to prohibit the use of pressure relief devices; and to certify the packagings in accordance with paragraph 828.

Issue 7: Air Transport Requirements

Background. TS–R–1 has introduced two new concepts for the air transport of radioactive material: the Type C package (paragraphs 230, 667–670, 730, 734–737) and Low Dispersible Material (LDM). Type C packages are designed to withstand severe accident conditions associated with air transport without loss of containment or significant increase in external radiation levels. The LDM is a material exemption to these new air transport standards that is granted based on a material's limited radiation hazard and low dispersibility. If qualified as LDM, material in quantities that would otherwise require a Type C package could continue to be transported by aircraft in a Type B package. U.S. regulations do not contain a Type C package or LDM category, but do have specific requirements for the air transport of plutonium (10 CFR 71.64 and 71.74). These specific NRC requirements for air transport of plutonium will continue to apply.

The Type C requirements apply to all radionuclides packaged for air transport that contain a total activity value above 3,000 A_1 or 100,000 A_2, whichever is less, for special form material, or above 3,000 A_2 for all other radioactive material. Below these thresholds, Type B packages may be used in air transport. The Type C package performance requirements are significantly more stringent than those for Type B packages. For example, a 90-meter per second (m/s) impact test is required instead of the 9-meter drop test. A 60-

minute fire test is required instead of the 30-minute for Type B packages. These stringent tests are expected to result in package designs that will survive more severe aircraft accidents than Type B package designs.

The LDM specification was added in TS–R–1 to account for radioactive materials (package contents) that have inherently limited dispersibility, solubility, and radiation levels. The test requirements for LDM to demonstrate limited dispersibility, and leachability are a subset of the Type C package requirements (90-m/s impact and 60-minute thermal test) with an added solubility test, and must be performed on the material without packaging. The LDM must also have an external radiation level below 10 mSv/h (1 rem/hr) at 3 meters. Specific acceptance criteria are established for evaluating the performance of the material during and after the tests (less than 100 A_2 in gaseous or particulate form of less than 100 micrometer aerodynamic equivalent diameter and less than 100 A_2 in solution). These stringent performance and acceptance requirements are intended to ensure that these materials can continue to be transported safely in Type B packages aboard aircraft. LDM must be certified as such by the Competent Authority (Paragraphs 803, 804, 828, 830).

In 1996, the NRC communicated to the IAEA that the NRC did not oppose the IAEA adoption of the newly created Type C packaging standards (letter dated May 31, 1996, from James M. Taylor, EDO, NRC, to A. Bishop, President, Atomic Energy Control Board, Ottawa, Canada). However, Mr. Taylor stated in the letter that, to be consistent with United States law, any plutonium air transport to, within or over the United States will be subject to the more rigorous U.S. packaging standards.

Discussion. A commenter to the 1999 ANPRM asserts that the testing criteria for Type C packages is inadequate. For example, the commenter questions the rigorousness of the testing described in TS–R–1, indicating that the minimum acceptable impact speed should be increased to at least 129 m/s, as was mandated by Congress. Several commenters state that it is unclear what the differences are between a Type B and Type C package and that the definitions should be clarified. Several commenters support the addition of the term LDM and recommend its incorporation into the HMR. Finally, one commenter suggests that the new concept of LDM was introduced to offset the problems encountered in developing a Type C package. The commenter further asserts that the nuclear industry would attempt to certify reprocessed fuel known as MOX as LDM. The commenter believes there are significant safety implications regarding the movement of these substances via transportation by air and very strongly opposes any adoption of requirements in this area.

According to the DOT/NRC Memorandum of Understanding, the NRC has responsibility for matters concerning packagings for fissile and greater-than-Type-A quantities of radioactive material. The NRC is proposing not to adopt the concepts of Type C packages or LDM at this time. In accordance with the NRC position, RSPA is not proposing to adopt the IAEA standards for Type C packaging or LDM.

Issue 8: Fissile Material Package and Transport Requirements

Background. Under the MOU between DOT and NRC, NRC establishes the packaging requirements for the transport of fissile radioactive material. In February 1997, NRC published an emergency final rule (62 FR 5913, February 10, 1997) to amend Part 71 of Title 10 of the Code of Federal Regulations (10 CFR 71) with respect to the regulations for shipping small quantities of fissile material; this rule was issued in response to a regulatory defect in the fissile material exemption regulations in § 71.53 of 10 CFR identified by an NRC licensee. Based on the public comments on the emergency final rule, NRC contracted with Oak Ridge National Laboratory (ORNL) to perform a thorough analysis of the possible hazards involved and to provide recommendations. In July 1998, the NRC published ORNL's conclusions as NUREG/CR–5342, entitled Assessment and Recommendations for Fissile-Material Packaging Exemptions and General Licenses Within 10 CFR Part 71. Based on the research and recommendations of this report, the NRC in its notice of proposed rulemaking to harmonize 10 CFR 71 with TS–R–1, is proposing several changes to its requirements for fissile exemptions.

In addition, the NRC is proposing in its NPRM the introduction of a Type B(DP) package, to be certified for use and used both to transport and to store spent nuclear fuel. Such a package would be issued an NRC Certificate of Compliance approving the design of a spent fuel (fissile material) transportation package, in accordance with the requirements of subpart I of 10 CFR 71, and an NRC Certificate of Compliance approving the design of a spent fuel storage cask, in accordance with the requirements of subpart L of 10 CFR 72.

Discussion. Several commenters assert that the TS–R–1 requirements for conducting criticality analyses for fissile materials being shipped by air require clarification. The commenters stated that a guidance note should be issued and included in TS–R–2 (now referred to as TS–G–1.1) when published and the HMR should reflect this clarification. RSPA has no authority to make unilateral changes in IAEA documents. RSPA, in coordination with the NRC, will analyze problems in performing criticality analyses for the shipment of fissile materials by air as they arise; the possibility of issuing a guidance document will be considered if it appears to be an appropriate means to address any problems encountered.

These commenters further stated that RSPA should provide clear guidance regarding the requirements for obtaining U.S. Competent Authority Certificates for air transport of fissile materials prior to formal harmonization of TS–R–1 and the HMR. As indicated in Issue 7, the NRC and RSPA do not propose to adopt TS–R–1 provisions for Type C packages or LDM. The practical consequence of this is that RSPA's Office of Hazardous Materials Safety, as U.S. Competent Authority, does not intend to issue Certificates of Competent Authority for Type C packages or LDM. Other Certificates of Competent Authority for the international transport of fissile materials by air will be issued following normal procedures described in §§ 173.471 and 173.473.

Accordingly, in this NPRM we propose to adopt the NRC fissile material exemption provisions in § 173.453, and to introduce the Type B(DP) package proposed by the NRC in its NPRM. We propose to remove the definition of ''fissile material, controlled shipment,'' and to revise § 173.457 and § 173.459 to remove the references to ''fissile material, controlled shipment'' and to base requirements for non-exclusive use and exclusive use shipments of fissile material packages on TS–R–1 package and conveyance CSI limits, since we feel that this would considerably simplify the transport of fissile material packages, while maintaining appropriate criticality safeguards.

Issue 9: Transitional Requirements

Background. Transitional requirements typically authorize: (1) Continued use of existing package designs and packagings already fabricated, although some additional requirements may be imposed; (2)

completion of packagings that are in the process of being fabricated or that may be fabricated within a given time period after the regulatory change; and (3) limited modifications to package designs and packagings without the need to demonstrate full compliance with the revised regulations, provided that the modifications do not significantly affect the safety of the package.

Each transition from one edition of the IAEA regulations to another (and the corresponding revisions of the NRC and DOT regulations) included transitional provisions. The transitional provisions in TS–R–1, the latest version, are found in paragraphs 815–818. Although provisions for continued use of packages and special form sources previously approved in accordance with the 1973 and 1985 editions of the IAEA regulations remain virtually unchanged, TS–R–1 does not provide transitional provisions for packages approved under the 1967 edition of the IAEA regulations.

The restrictive TS–R–1 transitional provisions will have several impacts. The primary impact of these two paragraphs is that Safety Series No. 6 (1967) approved packagings are no longer authorized. The second impact is that fabrication of packagings designed and approved under Safety Series No. 6 (1985/1985A) must be completed by a specified date. In TS–R–1, packages approved for use based on Safety Series No. 6 (1973/1973A revisions) will continue to be authorized for use and can continue to be used through their design life, provided they meet the following conditions: (1) multilateral approval is obtained; (2) TS–R–1 quality assurance requirements are adhered to; (3) TS–R–1 A_1 and A_2 activity values are used; and, (4) if applicable, approval for air transport of fissile radioactive material is obtained. While existing packagings are still authorized, no new packagings may be fabricated to this design standard. Should a safety issue associated with the package be identified, this packaging will need to meet all of the applicable requirements of TS–R–1. In summary, a packaging designed to Safety Series No. 6 (1973/1973A) can continue to be used.

In similar fashion, TS-R–1 states that those packages approved for use based on Safety Series No. 6 (1985/1985A revisions) may continue to be used, provided the packaging meets the following conditions: (1) TS–R–1 quality assurance requirements, (2) TS–R–1 A_1 and A_2 activity values, and, (3) if applicable, approval for air transport of fissile radioactive material. After December 31, 2003, use of these packages may continue under multilateral approval. Should a safety issue associated with the package be identified, the packaging will need to meet all of the applicable requirements of TS–R–1. Additionally, use of this packaging will end on December 31, 2006. Beginning January 1, 2007, all packagings will be required to meet TS–R–1 packaging approval requirements.

Discussion. Commenters to the ANPRM generally state that some type of transitional arrangements should be provided in the HMR to clarify how packages manufactured under earlier versions of Safety Series 6 will be phased out, and how and if these packages may be re-validated. One commenter suggests that we should provide a transition period prior to the full adoption of TS–R–1 that would provide shippers and carriers the flexibility to make shipments of radioactive materials under the current HMR requirements (equivalent to Safety Series 6) or under TS–R–1. Several commenters state that for domestic shipments, we should provide a one-year transition period for complete implementation of the TS–R–1 regulations. Other commenters suggest that we incorporate the following statement into the HMR: ''Packages that have been prepared for transport prior to (five-year effective date) may be offered for transport provided that the labeling, marking, and placarding provisions of the regulations in effect at time of shipment are complied with.''

We do not agree that the HMR should adopt the above suggestions. Radioactive material transport regulations in the HMR apply only to domestic transport and to the domestic portion of import and export shipments. Because the international modal organizations IMO and ICAO have adopted TS–R–1, international shipments must follow TS–R–1 requirements.

Accordingly, in this NPRM, we propose to accept the IAEA transitional requirements and will begin the phase out of its Type B specification packages. We propose that manufacture of all Type B specification packages conforming to Safety Series 6 for radioactive material be prohibited as of the date of implementation of this rule and that use of these packages be prohibited two years after implementation of this rule.

Issue 10: Other TS–R–1 Changes

We propose to add a requirement that the active material in an instrument or article intended to be transported in an excepted package be completely enclosed by the non-active components. This is a requirement which appears in paragraph 517(c) of TS–R–1, and is a change from the wording in Safety Series No. 6. It is intended to enhance the safety of shipments of instruments or articles in excepted packages by making it explicit that the radioactive contents in such an instrument or article must be completely enclosed by the non-radioactive material of which the instrument or article is constructed in order to prevent release of the active contents under normal conditions of transport.

III. Section-by-Section Review

Part 171

Section 171.7

In the table of material incorporated by reference, we are proposing to remove the DOE Uranium Hexafluoride Good Practices manual, the1985 IAEA Regulations for the Safe Transport of Radioactive Material, Safety Series No. 6. and an ISO standard entry, revise the IAEA Regulations for the Safe Transport of Radioactive Material, No. TS–R–1, 1996 Edition and two ISO standard entries, and add three new entries consisting of two ISO standards and a United States Enrichment Corporation Good Handling Practices for Uranium Hexafluoride.

Section 171.11

In HM–215D, [66 FR 33336], we added a paragraph to §§ 171.11 and 171.12 to clarify that only the current definition of radioactive material applies (i.e., 70 Bq/g (0.002 microcurie/g)) when transporting a Class 7 (radioactive) material domestically. In addition, we maintained the current provisions in §§ 171.11 and 171.12, including the values for Type A packaging contents. Therefore, in § 171.11, we are proposing to remove paragraph (d)(6)(vi) that limits the Class 7 (radioactive) material to the current definition in § 173.403. This would allow for the proposed adoption of the current edition of the IAEA regulations for both domestic and international shipments. To clarify that the exceptions described in § 173.422 apply to instruments or articles containing natural uranium or thorium, and empty packagings, as well as limited quantities of radioactive material, we are also proposing to change the phrase ''limited quantities'' in § 171.11(d)(6)(ii) and (iv) to ''excepted packages.''

Section 171.12

In § 171.12, we propose to revise paragraphs (d) introductory text and (d)(4) to remove the reference to Safety Series No. 6, 1985 edition and replace

it with TS–R–1, 1996 edition. In addition, we propose to remove paragraph (d)(7) that limits the Class 7 (radioactive) material definition to the current definition in § 173.403. This would allow for the proposed adoption of the current edition of the IAEA regulations for both domestic and international shipments.

Part 172

Section 172.101

In the Hazardous Materials Table, we propose to revise the radioactive material (Class 7) entries consistent with new entries introduced in the UN Recommendations and IAEA's ''Regulations for the Safe Transport of Radioactive Material, No. TS–R–1'' to allow for both domestic and international shipment. In addition, we propose to remove those radioactive material entries that currently allow for domestic shipment only.

Section 172.203

In paragraph (d) we propose to remove two requirements that would become redundant upon adoption of the new proper shipping names: (1) Paragraph (d)(1) requiring that the words ''Radioactive Material'' be entered on the shipping paper unless already contained in the proper shipping name, and

(2) paragraph (d)(11) requiring that for a shipment of low specific activity material or surface contaminated objects, the appropriate group notation of LSA–I, LSA–II, LSA–II, SCO–I, or SCO–II be entered in the shipping description. In addition, we are proposing to revise paragraph (d)(4) to require that customary units, if used, be enclosed in parentheses. Because the isotope plutonium-238 has been removed from the definition of fissile material, we propose to revise paragraph (d)(4) to remove plutonium-238 from the list of fissile radionuclides for which the weight in grams or kilograms may be listed instead of or in addition to the activity. Paragraphs (d)(7)(ii) and (d)(7)(iii) would be redesignated (d)(7)(iii) and (d)(7)(iv), and a new paragraph (d)(7)(ii) would be added to require inclusion of the criticality safety index in the shipping description for fissile material packages. Paragraphs (d)(2) through (d)(10) would be redesignated (d)(1) through (d)(9). A new paragraph (d)(10) would be added to require the words ''Highway route controlled quantity'' on a package containing a highway route controlled quantity of Class 7 (radioactive) materials.

Section 172.301

We propose to revise paragraph (a)(1) to include the UN identification number marking requirement for excepted packages of Class 7 (radioactive) materials.

Section 172.310

We are proposing to revise paragraph (b) to require industrial packagings to be marked Type IP–1,'' ''Type IP–2,'' or ''Type IP–3,'' as appropriate. We propose to revise paragraph (c) to remove the reference to Type B package designs, and to bring the wording into closer correspondence to that in TS–R–1. We further propose to redesignate paragraphs (c) and (d) as (d) and (e), and to add a new paragraph (c) to require the outside of a Type IP–2, Type IP–3 or Type A packaging to be marked with the international vehicle registration code of the country of origin of design.

Section 172.400

For fissile material packages, TS–R–1 (paragraph 218) introduced the concept of a CSI to replace the ''TI for criticality control purposes,'' in use until now, and decoupled it from the determination of the TI for such a package. The CSI must be displayed on shipments of fissile material (paragraphs 544 and 545) using a new ''FISSILE'' label. The redefined TI is determined in the same way as the ''TI for radiation control purposes'' and continues to be displayed on the traditional ''radioactive material'' label. Therefore, we propose to revise the table in § 172.400 to add the new ''FISSILE'' label.

Section 172.402

Paragraph (d) would be revised to require each package containing fissile material, other than fissile excepted, to bear the new FISSILE label. (See discussion under § 172.400 above.)

Section 172.403

We propose to add a new paragraph (e) to require each FISSILE label to be completed with the CSI. (See discussion under § 172.400 above.) Paragraph (g)(2) would be revised to require that customary units, if used, be enclosed in parentheses. Because the isotope plutonium-238 has been removed from the definition of fissile material, we are also proposing to revise paragraph (g)(2) to remove plutonium-238 from the list of fissile radionuclides for which the weight in grams or kilograms may be listed instead of or in addition to the activity.

For convenience to the reader, we propose to add a new paragraph (h) to incorporate the requirements presently in § 173.448(g) pertaining to the labeling of overpacks, and to add a clarification that the label category for the overpack must be determined using the maximum surface radiation level of the interior package(s) unless the overpack qualifies as an appropriate package type for its contents.

Section 172.441

We are proposing to add a new § 172.441 to identify the specification requirements for the new ''FISSILE'' label. (See discussion under § 172.400 above.)

Part 173

Section 173.401

We are proposing to revise paragraphs (b)(2) and (b)(3) for clarity. In addition, we propose to add new paragraph (b)(4) to expand upon those areas when the HMR would not apply by including under specific conditions Class 7 (radioactive) material in natural material and ores containing naturally occurring radionuclides, respectively. In regard to paragraph (b)(2), the proposed language accurately and more succinctly reflects the present contents of § 173.401(b)(2) and (b)(3). In regard to paragraph (b)(3) the proposed language is intended to codify actual practice. In regard to paragraph (b)(4), the proposed language is intended to except from the HMR the majority of shipments of ores and materials that contain naturally occurring radionuclides, but that are to be used to produce materials whose benefits lie in their non-radiological qualities (such as coal, gypsum, phosphates, non-radioactive metals, etc.). The upper limit of 10 times the activity concentration or consignment activity thresholds assures that worker and public doses will remain small from these unregulated materials, while the exemption permits their continued use in commerce without making that use economically unfeasible.

Section 173.403

We propose to revise this section by removing the definitions for ''Non-fixed radioactive contamination,'' and ''Fissile material, controlled shipment,'' and revising the definitions for ''Exclusive use,'' ''Fissile material,'' ''Low Specific Activity (LSA) material,'' ''Low toxicity alpha emitters,'' ''Maximum normal operating pressure,'' ''Multilateral approval,'' ''Package,'' ''Radioactive contents,'' ''Radioactive material,'' ''Special form Class 7 (radioactive) material,'' ''Surface Contaminated Object (SCO),'' ''Transport Index (T)(I),'' ''Unilateral approval,'' ''Unirradiated uranium,'' and ''Uranium—natural, depleted, or

enriched.'' New definitions for ''Consignment,'' ''Contamination,'' ''Criticality Safety Index (CSI),'' ''Exemption value'', and ''Quality assurance'' would be added.

The following definitions would be removed:

Non-fixed radioactive contamination. We propose to remove this definition but its essential elements would be added to the definition of ''contamination'' for clarity. (See discussion under the definition for contamination below.)

Fissile material, controlled shipment. We propose to remove this definition as part of the revision of §§ 173.457 and 173.459 of this subchapter, in order to simplify the requirements for transporting fissile material.

The following definitions would be revised:

Exclusive use. We propose to clarify that a vehicle survey is required under certain circumstances after use.

Fissile material. We propose to revise this definition for consistency with TS–R–1 and to include uranium-233, uranium-235, plutonium-239, plutonium-241, or any combination of these radionuclides. Plutonium-238 would be removed from the definition of ''fissile material,'' because plutonium-238 is only fissionable, not fissile. It refers only to the fissile radionuclides themselves and does not include the non-fissile material containing these fissile radionuclides.

Low Specific Activity (LSA) material. We propose to revise the definition of LSA–I to allow shipments of very low specific activity materials containing one or more of a variety of radionuclides, and to remove the present category which refers to mill tailings, contaminated earth, concrete, rubble, other debris, and activated material in which Class 7 (radioactive) material is essentially uniformly distributed and the average specific activity does not exceed 10^{-6} A_2/g.

Low toxicity alpha emitters. This definition would be revised for consistency with TS–R–1 and primarily includes physical and chemical concentrates in addition to natural uranium, depleted uranium, natural thorium, uranium-235, uranium-238, thorium-228 and thorium-230 when contained in ores; or alpha emitters with a half-life of less than 10 days.

Maximum normal operating pressure. We propose to revise this definition to align the HMR with the wording in TS–R–1 and 10 CFR 71.4.

Multilateral approval. We propose to revise this definition for clarity by adding the word ''design.'' The Competent Authority approval for a package is actually for the package design.

Package. We propose to revise this definition for clarity. The definitions of each package type in § 173.403 include the requirements they must satisfy if their contents are not fissile. Therefore, we are proposing to include the caveat that if the contents are fissile, additional requirements must be satisfied. In addition, the definitions of types of packages would be rearranged, to put the package types in an order more closely reflecting their increased capability to retain the contents under normal, as well as hypothetical accidental, conditions of transportation. Finally, the revision of the definition of Package would include the addition of the definition for the proposed NRC Type B(DP) package.

Radioactive contents. We propose to revise this definition to be consistent with TS–R–1.

Radioactive material. We propose to revise this definition to be consistent with TS–R–1. Currently, we use a specific activity threshold of 70 Bq/g (0.002 microcurie/g) for defining a material as radioactive for transportation purposes. The HMR applies to all radioactive materials with specific activities above this value. Therefore, radioactive materials with specific activities equal to or below this value are not regulated. The 70 Bq/g specific activity value is applied collectively for all radionuclides present in a material; *i.e.,* if a chain of radionuclides is present, the sum of the activities of all radionuclides in the chain is to be compared with 70 Bq/g. During the development of TS–R–1, it was recognized that there is no technical justification for the use of a single activity-based exemption (70 Bq/g) value for all radionuclides. As a result, it was concluded that a more rigorous technical approach would be to base radionuclide exemptions on a uniform dose basis, rather than a uniform specific activity (also known as activity concentration) basis. (Please refer to a more detailed discussion of this in Section II of this notice under Issue No. 1.)

Special form Class 7 (radioactive) material. We propose to revise this definition to be consistent with TS–R–1.

Surface Contaminated Object (SCO). We propose to revise this definition for clarity.

Transport Index. We propose to revise this definition consistent with TS–R–1. This is the number which is used to provide control over radiation exposure and is assigned to a package, overpack or freight container, or to unpackaged LSA–I or SCO–I.

Unilateral approval. We propose to revise this definition by adding the word ''design.'' The Competent Authority approval for a package is actually for the package design.

Unirradiated uranium. We propose to revise this definition to be consistent with TS–R–1.

Uranium—natural, depleted, or enriched. We propose to revise this definition for clarity. Minor word and number changes, in addition to clarifying that ''natural uranium'' does not refer to ores, and that all unirradiated uranium contains a small amount of uranium-234.

We propose to add the following definitions:

Consignment. We propose to add this definition to clarify to what total quantity of radioactive material the consignment activity exemption values are to be applied.

Contamination. We propose to add this definition for consistency with TS–R–1. The proposed definition includes the definitions for ''fixed radioactive contamination'' and ''non-fixed radioactive contamination.'' The quantitative definition of contamination is in Safety Series No. 6, 1985 Edition (As Amended 1990) as well as TS–R–1; it was inadvertently omitted in the previous harmonization rulemaking (HM–169A, September 28, 1995). The consequence would be that non-radioactive materials with radioactive substances on the surface in levels below those listed in the definition for contamination would not be considered radioactive for purposes of transportation.

Criticality Safety Index (CSI). This definition would be added to be consistent with TS–R–1. The introduction of the CSI is intended to simplify the representation on labels, and in shipping papers of a package's criticality hazard and its radiation hazard by using separate numbers to describe the two. Currently, the TI serves a dual role, in that for fissile packages a TI is determined for the radiation hazard, another for the criticality hazard, and then the final TI assigned to the packages is the greater of the two. The introduction of the CSI permits the use of the TI exclusively for describing the radiation hazard. This reduces the uncertainty inherent in not knowing whether the TI value is because of one hazard or the other, and should aid shippers, carriers, and emergency responders in understanding the hazards associated with a radioactive materials package.

Exemption value. This definition would be added to clarify that the phrase refers to the activity concentration or consignment activity thresholds above which a material would be considered sufficiently radioactive to be subject to the HMR, and to distinguish if from a DOT exemption, defined in § 171.8.

Fissile material package. This definition would be added to clarify that Type AF package, Type BF package, Type B(U)F package, Type B(M)F package, or fissile material package means a fissile material packaging together with its fissile material contents.

Fixed radioactive contamination. This definition would be added to be consistent with TS–R–1. (See discussion under the definition for ''contamination'' above.)

Quality assurance (QA). This definition would be added to be consistent with TS–R–1. We currently require evidence of a QA program for issuing Certificates of Competent Authority, but do not define it, except to indicate that a USNRC approved program is acceptable, or also that adhering to §§ 173.474 and 173.475 is acceptable for export of DOT Specification packages. Therefore, the introduction of the TS–R–1 definition would clarify what we mean by a QA program, and call attention to the fact that this is something we associate with radioactive material transport.

Section 173.411

We propose to revise paragraph (b)(5)(ii) to correct the reference to the ISO Standard 1496. As described in the 1985 Edition of Safety Series No. 6 and in TS–R–1, the reference should be to Part 1, Cargo Containers, instead of Part 3, Tank Containers.

Section 173.415

We propose to revise paragraph (a) to clarify that after April 1, 1997, the use of Specification 7A packagings designed in accordance with the requirements of § 178.350 in effect on October 1, 1996 would continue to be authorized.

Section 173.416

We propose to remove paragraphs (d), (e) and (f) to discontinue the use of DOT Specification 20WC and 21WC as authorized Type B packaging. We also propose to revise paragraph (c) to discontinue the use of DOT Specification 6M as an authorized Type B package, and to specify that 2 years after the effective date of the final rule, these DOT Specification packages may no longer be used.

Section 173.417

We propose to remove paragraphs (a)(1), (a)(2), (a)(6), (b)(1) and (b)(2) to discontinue the use of DOT Specification 6L, 6M and 1A2 as authorized fissile materials packagings. We also propose to add a new paragraph (c) to specify that 2 years after the effective date of the final rule, these packages may no longer be used. Tables 2, 4, and 5 would be removed. Tables 3 and 6 would be redesignated as Tables 2 and 3, respectively. Paragraphs (a)(3), (a)(4), (a)(5), (a)(7) and (a)(8) would be redesignated as (a)(1) through (a)(5), respectively, and (b)(3), (b)(4), and (b)(5) as (b)(1) through (b)(3). The new paragraphs (a)(3) and (b)(2) would have the references to Safety Series No. 6 changed to No. TS–R–1. The new paragraph (a)(4) would be revised to include the greater than 0.1 kg of uranium hexafluoride provision. The proposed NRC Type B(DP) packaging would be added to new paragraph (b)(1), and Type B packagings would be removed from the new paragraphs (a)(2), (a)(3), (b)(1) and (b)(2).

Section 173.420

We propose to revise § 173.420 to introduce new performance packaging requirements for packagings containing more than 0.1 kg of UF_6 to include ISO Standard 7195 as an alternative to American National Standard N14.1.

Section 173.421

We propose to revise paragraph (a) to indicate that an excepted package of a limited quantity of Class 7 (radioactive) material is not excepted from all marking requirements.

Section 173.422

Consistent with the new marking provisions for excepted packages containing radioactive materials in TS–R–1, we propose to eliminate the requirement in § 173.422(a) for a certification statement for such packages. In addition, we are proposing to add the requirement that excepted packages be marked with the UN identification number, and to remove the reference to § 173.423, since § 173.422 deals with Class 7 (radioactive) material classed as Class 7, while § 173.423 refers only to multiple hazard limited quantity Class 7 (radioactive) materials.

Section 173.424

We propose to revise § 173.424 to indicate that an excepted package containing a radioactive instrument or article is not excepted from all marking requirements. In addition, we propose to require each instrument or article, except radio luminescent time-pieces or devices, to be transported in an excepted package bearing the marking ''RADIOACTIVE,'' and that the active material in an instrument or article containing radioactive material be completely enclosed by the non-active components.

Section 173.426

We propose to revise § 173.426 to indicate that excepted packages of articles containing natural uranium or thorium are not excepted from all marking requirements.

Section 173.427

We propose to revise § 173.427 to clarify: (1) LSA/SCO transportation and packaging requirements; (2) that fissile LSA is prohibited; i.e., that material containing fissile radionuclides may be classified as LSA only if it satisfies one of the sets of conditions in § 173.453 to be considered fissile-excepted material; and (3) exclusive use requirements and provisions. In addition, we are also proposing to revise this section to authorize the transportation of unpackaged LSA–I and SCO–I material, and to remove the present exception for LSA material and SCO conforming to the provisions specified in 10 CFR 20.2005.

Section 173.428

We propose to revise § 173.428 to include a requirement for marking an empty package with the UN identification number. We propose to redesignate paragraphs (c), (d) and (e) as (d), (e) and (f). In addition, we propose to add a new paragraph (c) to require that the outer surface of any uranium or thorium component of a radioactive materials package intended to be shipped as an empty package be covered by an inactive sheath. This is a safety improvement, and makes this requirement consistent with that in TS–R–1 for the transport of empty radioactive material packages.

Section 173.431

We propose to revise paragraph (b) to remove the reference to a Type B package.

Section 173.433

We propose to revise § 173.433 to reference the nuclide-specific exemption values, and clarify how these may be calculated for mixtures. We also propose to revise the wording to reflect more closely the wording in TS–R–1, and to incorporate the TS–R–1 expression for determining the limits on activities of radionuclides which may be transported in a Type A package when

some of the material is in special form and some in normal form.

Section 173.435

We propose to replace the present ''Table of A_1 and A_2 values for radionuclides,'' with accompanying footnotes, with the A_1 and A_2 values and accompanying footnotes from Table I of TS–R–1. The exception to allow the domestic transport of up to 20 Ci of Mo–99 in a Type A package would be retained. In addition, the Safety Series No. 6 values of A_1 and A_2 would be retained for Cf–252.

Section 173.436

In accordance with our proposal to adopt the nuclide-specific exemption values found in TS–R–1, we propose to add a new § 173.436 to contain a table entitled ''Exempt material activity concentrations and exempt consignment activity limits for radionuclides.'' This table, along withaccompanying footnotes, would be taken from Table I of TS–R–1.

Section 173.441

The title would be revised to include exclusive use provisions. Paragraph (d) would be redesignated paragraph (e). A new paragraph (d) would be added in order to assemble in one location the total TI restrictions for non-exclusive use and exclusive use shipments, and storage in transit, of Class 7 (radioactive) materials.

Section 173.443

We propose to revise Table 11, in § 173.443 to list the true non-fixed contamination limits for the outer surfaces of packages. In addition, we propose to revise paragraph (a)(1) to indicate that in calculating the contamination level from the activity measured on the wipe, the true wipe efficiency must be used or a default efficiency of 0.10 may be assumed.

Section 173.448

We propose to revise § 173.448 to remove the requirements in § 173.448(g)(1) for the labeling of overpacks and relocate them to § 172.403(h). Relocating the requirements for the labeling of overpacks to § 172.403(h) is more logical and should aid the reader.

Section 173.453

We propose to revise § 173.453 to be consistent with the new fissile material exceptions included in NRC rulemaking.

Section 173.457

We propose to simplify the requirements for transporting fissile material packages by incorporating in § 173.457 the TS–R–1 concept of CSI and TS–R–1 CSI limits, and by eliminating the concept of ''fissile material, controlled shipment,'' which was originally developed to control transport of Fissile Class III materials, under a now obsolete scheme for classifying fissile material packages. Because all fissile material transport is now limited by the total CSI which may be carried on a conveyance, this concept is no longer needed.

Section 173.459

We propose to revise § 173.459(a) to replace the reference to the criticality control transport index with the criticality safety index. With the elimination of the concept of ''fissile material, controlled shipment'' and the inclusion of the total TI limits in § 173.441 and total CSI limits in § 173.457, we propose to remove § 173.459(b) and (c), that refer to circumstances under which a shipment would become a fissile material, controlled shipment. Because the total CSI conveyance limits provide adequate safeguards against criticality, these paragraphs are no longer needed.

Section 173.469

To allow for the substitution of the Class 4 impact test from ISO 2919–1980(E) for the basic impact and percussion tests, we propose to revise paragraph (d)(1) to include the TS–R–1 restriction that the sealed capsule and contents have a mass less than 200 g. In addition, we propose to revise the reference for the alternate leak test methods in paragraph (a)(4)(ii) from ISO/TR 4826–1979(E) to ISO 9978–1992(E), and other minor revisions of syntax would be incorporated in this section to reflect more accurately the wording of TS–R–1.

Section 173.471

We propose to revise the introductory text to remove Type B as a sub-class of NRC approved packages, since the NRC no longer issues certificates for this sub-class.

Section 173.473

We propose to revise the introductory text to clarify the types of foreign-made packages that would require certification, and to change the reference to Safety Series No. 6 to that for No. TS–R–1.

Section 173.476

We propose to revise paragraph (c)(4) to specify what the required quality assurance program should cover. In addition, we propose to add a new paragraph (c)(5) to require that a description of any planned pre-shipment actions for use in the consignment of special form radioactive material be included in an application for a U.S. Competent Authority Certificate for Special Form Material. The former is in Safety Series No. 6, 1985 Edition, but never included in the HMR; the latter is new to TS–R–1.

Section 173.477

We propose to add a new § 173.477 to define the approval requirements for packagings containing more than 0.1 kg of UF_6.

Part 174

Section 174.700

We propose to revise paragraph 174.700(b) to reflect the fact that the upper TI limit of 50 refers to both the total TI and the total CSI for non-exclusive use shipments. In addition, we propose to add a new paragraph (d) to emphasize that the appropriate transport restrictions for fissile material packages apply to transport by rail.

Part 175

Section 175.700

We propose to revise paragraph (a) by adding a requirement to limit the CSI to a maximum of 3.0 for a fissile material package transported in a passenger carrying aircraft; this is necessary because under TS–R–1 the historical limitation of 3.0 TI on a passenger carrying aircraft would only limit the radiation hazard and not the criticality hazard. In addition, we propose to add a new paragraph (e) to ensure that on a passenger aircraft neither the total TI nor the total CSI exceeds 50.

Section 175.702

We propose to revise § 175.702 to include the requirements for non-exclusive use cargo aircraft only, based on the separate TS–R–1 limits on total transport index and total criticality safety index.

Section 175.703

We propose to add a new paragraph (c) to emphasize that the appropriate transport restrictions for fissile material packages also apply to transport by air. Current paragraphs (c), (d), and (e) would be redesignated paragraphs (d), (e), and (f) respectively, and the redesignated paragraph (d) would be revised to replace the reference to fissile material, controlled shipment with requirements for exclusive use shipments by air.

Part 176

Section 176.700

We propose to remove paragraph (c) due to the proposed elimination of the term ''fissile material, controlled shipment. Paragraphs (d) and (e) would be redesignated (c) and (d) respectively. In addition, the requirement that groups of radioactive material packages containing fissile material be separated by at least 6 m (20 feet) from all other such groups would be moved to § 176.704.

Section 176.704

We propose to revise § 176.704 including the section title to reflect the introduction of additional transportation controls based on the criticality safety index for fissile material packages, and the decoupling of package controls according to transport indexes and criticality safety indexes. We also propose to replace Table III with Table IIIA to list ''Transport Index Limits'' and Table IIIB for the ''Criticality Safety Index Limits.'' In addition, we propose to add to this section the requirement that groups of radioactive material packages containing fissile material be separated by at least 6 m (20 feet) from all other such groups (see discussion under § 176.700).

Section 176.708

We propose to revise § 176.708 to provide a more detailed dose rate guidance pertaining to an alternate method for determining segregation distances, in accordance with the requirements of the latest IMDG Code. We also propose to restrict the use of this alternate method to the case of exclusive use shipments, for which the proposed § 176.704(f) requires a radiation protection program approved by the competent authority of the flag state of the vessel.

Part 177

Section 177.842

In § 177.842, in paragraph (g), a reference to transport index for fissile material packages would be replaced by one to criticality safety index.

Part 178

Section 178.350

In § 178.350, paragraph (b) would be revised to remove the wording ''and Radioactive Material'' from the marking requirement. It is duplicative since all proposed proper shipping names include the words ''Radioactive Material.'' In addition, we propose to add a new paragraph (c) to require that each Specification 7A package be marked with the manufacturer's or offeror's name.

Section 178.352

As a result of our proposal to discontinue the use of DOT Specification 6L metal packagings as an authorized fissile material packaging, we propose to remove in its entirety § 178.352.

Section 178.354

As a result of our proposal to discontinue the use of DOT Specification 6M metal packagings as an authorized Type B and fissile material packaging, we propose to remove in its entirety § 178.354.

Section 178.362

As a result of our proposal to discontinue the use of DOT Specification 20WC wooden protective jacket as an authorized Type B packaging, we propose to remove in its entirety § 178.362.

Section 178.364

As a result of our proposal to discontinue the use of DOT Specification 21WC wooden-steel protective overpack as an authorized Type B packaging, we propose to remove in its entirety § 178.364.

IV. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

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

In consideration of the proposed changes in this notice, we looked to the ''Draft Regulatory Analysis of Major Revision of 10 CFR Part 71'' NUREG/CR–6713, dated March 2001 prepared for the Nuclear Regulatory Commission (NRC) in support of its related notice of proposed rulemaking. A copy of that document is available for review in this docket (RSPA–99–6283).

Potential benefits identified in this NPRM include enhanced safety resulting from the consistency of domestic and international requirements for transportation of radioactive materials. In addition, the proposed changes should permit continued access to foreign markets by domestic shippers of radiopharmaceuticals and other radioactive materials.

The NUREG/CR–6713 analysis of regulatory proposals concerning revisions to packaging standards, including the phased elimination of certain DOT specification packagings (e.g., DOT 6L, 6M, 20WC and 21WC) in favor of NRC approved packagings indicates that none of the evaluated changes (individually or collectively) are expected to result in significant economic impacts to NRC licensees. We believe the same holds true for all other shippers, e.g., contractors performing work in support of the Department of Defense and the Department of Energy.

One area that has the greatest potential for substantially increased costs to shippers of radioactive materials, concerns large stocks of depleted uranium hexafluoride (UF_6) stored in currently authorized packagings at three different locations. If it is eventually determined that this material should be moved off-site to one or more conversion facilities, then it is likely that the current packagings will not meet the standards proposed in this NPRM. In that case the existing packages likely will be required to be overpacked in order to meet the standard for a hypothetical fire test. That action could result in a one-time cost of $9 million to $13 million to design overpacks, purchase overpacks, and purchase additional trailers with the proper tie-down locations. However, because the likely number and location of UF_6 conversion facilities is purely speculative at this time, we do not think these potential costs should weigh heavily in our determination to propose higher standards for presently on-going shipments of UF_6. As appropriate, we could subsequently revisit the issue of packaging standards for existing packages of depleted UF_6 in a separate rulemaking docket.

Numerical data for most of the proposed changes are difficult to obtain. Therefore, we invite all commenters to address the issues discussed in this NPRM. For persons required to comply with the HMR, can you quantify any increases or decreases in costs resulting from the proposals in this NPRM? Can you quantify any benefits that may result?

B. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This proposed rule would preempt State, local and Indian tribe requirements but does not propose any regulation that has direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the

consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This proposed rule concerns the classification, packaging, marking, labeling, and handling of hazardous material, among other covered subjects and would preempt any State, local, or Indian tribe requirements not meeting the ''substantively the same'' standard. This proposed rule is necessary to incorporate changes already adopted in international standards. If the changes proposed in this NPRM are not adopted in the HMR, U.S. companies, including numerous small entities competing in foreign markets, will be at an economic disadvantage. These companies would be forced to comply with a dual system of regulation. The proposed changes are intended to avoid this result.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if the Secretary of Transportation issues a regulation concerning any of the covered subjects, the Secretary must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. We propose that the effective date of Federal preemption will be 180 days from publication of a final rule in the **Federal Register**.

C. Executive Order 13175

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule would incorporate changes introduced in the 1996 edition (revised) of the IAEA Regulations For The Safe Transport of Radioactive Material, TS–R–1. It would apply to offerors and carriers of radioactive materials and would facilitate the transportation of hazardous materials in international commerce by providing consistency with international requirements. Alternatively, if we do not so revise the HMR, U.S. companies will be forced to comply with a dual system of regulation, to their economic disadvantage, and to the cause of decreased safety in transportation attributed to the complexity of having to comply with multiple sets of regulations. The proposed changes are intended to avoid this result.

Many of the persons subject to revisions of the HMR proposed in this NPRM are small businesses. They comprise a wide variety of shippers and carriers, including nuclear pharmacies, as well as packaging manufacturers, and manufacturers of measuring instruments and other articles that contain radioactive materials. To a large extent the greatest impact on these small entities concerns proposed requirements for hazard communication, e.g., reformatting shipping papers and package markings to reflect revised hazardous materials descriptions and proper shipping names, marking the ''UN'' number on excepted packages of Class 7 (radioactive) material, and a new labeling requirement to communicate the criticality safety index of packages containing fissile materials. These proposed revisions to the HMR obviously affect the administrative procedures of shippers, carriers, and the like, and it will require retraining of hazmat employees, but none are expected to have an adverse effect on core business operations.

In addition to revisions to hazard communication requirements, currently authorized packagings conforming to specification DOT 6L, 6M, and UN standard packaging 1A2 used for the transportation of fissile radioactive materials would be prohibited under the proposed rule, thereby requiring the manufacturers of these packaging designs to requalify their packagings to conform to NRC requirements for fissile materials or to utilize other packages which conform to those requirements. The NRC approval process requires the packaging manufacturer to pay a fee to the NRC for its technical review of the design and test results, but again we believe that fee is not so great as to cause manufacturers to discontinue a line of packagings, much less adversely affect the manufacturer's ability to continue to exist as a going concern. The proposed phase-in period of 2 years following the effective date of a final rule for continued use of currently authorized packagings should provide for a smooth transition to the NRC approval process.

Several commenters to the advance notice of proposed rulemaking noted that one of the requirements in TS–R–1 would require placarding of each transport vehicle containing any quantity of a Class 7 (radioactive) material. Incorporating that requirement into the HMR would impose numerous, potentially costly, requirements on shippers and carriers. That includes a requirement that all operators of motor vehicles have a commercial driver's license, and the carrier would be required to file a registration statement with RSPA and pay an annual fee. Over the years, we examined the need for placarding of transport vehicles carrying any quantity of radioactive material and in each instance we determined that is unnecessary. As background materials used in the development of TS–R–1 provide no new justification for placarding for any quantity of radioactive material, we find ourself in agreement with commenters to the docket and we are not now proposing such a requirement for domestic shipments.

In consideration of the above, and on the basis of the NUREG/CR–6713 analysis of regulatory proposals prepared for the NRC in support of its associated notice of proposed rulemaking, I hereby certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal. A copy of NUREG/CR–6713 is available for review in this docket (RSPA–99–6283).

E. Paperwork Reduction Act

RSPA has a current information collection approval under OMB No. 2137–0510, Radioactive (RAM) Transportation Requirements, with 14,480 burden hours and $117,270.60 annual cost for burden. RSPA believes that this proposed rule may result in an increase in annual burden hours and costs. If these proposals are finalized, the current approval would be required to be revised and resubmitted to OMB for extension and re-approval.

Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection that RSPA is submitting to OMB for extension and re-approval based on the requirements in this proposed rule. RSPA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in this proposed rule since the information collection was last approved. RSPA estimates that the total information collection and recordkeeping burden as proposed in this rule would be revised as follows:

OMB No. 2137–0510: 2137–0510

Number of Respondents: 3,817.
Total Annual Responses: 21,519.
Total Annual Burden Hours: 15,270.
Total Annual Burden Cost: $139,895.60.

RSPA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of the information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

Written comments should be addressed to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. Comments should be received prior to the close of comment period identified in the **DATES** section of this rulemaking. Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it displays a valid OMB control number. If these proposed requirements are adopted in a final rule, RSPA will submit the revised information collection and recordkeeping requirements to the Office of Management and Budget for approval.

F. Regulation Identifier Number (RIN)

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

G. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The NRC prepared an environmental assessment entitled: ''Environmental Assessment (EA) of Major Revision to Packaging and Transportation of Radioactive Material Regulations'', Final Report, February 2000, on its proposed rule which addresses issues also raised in this rulemaking. On the basis of this EA, we find that there are no significant environmental impacts associated with this proposed rule. A copy of the environmental assessment prepared by the NRC is available for review in the docket.

List of Subjects

49 CFR Part 171

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

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Railroad safety.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I, Subchapter C is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

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

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

2. In § 171.7, in the paragraph (a)(3) table make the following amendments:

a. Under the entry ''Department of Energy (USDOE),'' the entry for ''USDOE, ORO 651-Uranium Hexafluoride; A Manual of Good Practices, Revision 6, 1991 edition'' would be removed;

b. Under the entry ''International Atomic Energy Agency (IAEA),'' the entries ''IAEA, Regulations for the Safe Transport of Radioactive Material Safety Series No. 6, 1985 Edition (As Amended 1990); Including 1985 Edition (Supplemented 1986 and 1988)'' and ''IAEA, Regulations for the Safe Transport of Radioactive Material, No. TS–R–1, 1996 Edition'' would be removed and a new entry would be added in alphabetical order;

c. Under the entry ''International Organization for Standardization,'' the entries for ''ISO/TR 4826–1979(E)—Sealed radioactive sources—Leak test methods'', ''ISO 1496–3 Series 1 freight containers-Specification and testing, Part 3: Tank containers for liquids, gases and pressurized dry bulk, March 1, 1995, Fourth Edition'' and ''ISO 1496–3–1995(E)—Series 1 Freight Containers—Specification and Testing—Part 3: Tank Containers for Liquid, Gases and Pressurized Dry Bulk'' would be removed and two new entries added in alpha-numeric order, and the entries ''ISO–7195:1993(E)—packaging of uranium hexafluoride (UF_6) for transport, November 1, 1993, First

Edition'' and ''ISO 9978:1992 (E)—Radiation protection—Sealed radioactive sources—Leakage test methods, February 15, 1992, First Edition'' would be added in alphanumeric order; and

d. A new entry for ''United States Enrichment Corporation, Inc. (USEC) would be added in appropriate alphanumeric order.

The revisions and additions read as follows:

§ 171.7 Reference material.

(a) *Matter incorporated by reference* * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
International Atomic Energy Agency (IAEA) * * *	
IAEA, Regulations for the Safe Transport of Radioactive Material, 1996 Edition (Revised), No. TS–R–1 (ST–1, Revised)	171.12, 173.473
* * * * * * *	
International Organization for Standardization * * *	
* * * * * * *	
ISO 1496–1: 1990(E)—Series 1 freight containers—Specification and testing, Part 1: General cargo containers, August 15, 1990, Fifth Edition.	173.411
ISO 1496–3: 1995(E)—Series 1 freight containers—Specification and testing, Part 3: Tank containers for liquids, gases and pressurized dry bulk, March 1, 1995, Fourth Edition.	178.274
* * * * * * *	
ISO–7195: 1993(E)—Packaging of uranium hexafluoride (UF_6) for transport, November 1, 1993, First Edition	173.420
* * * * * * *	
ISO 9978: 1992(E)—Radiation protection—Sealed radioactive sources—Leakage test methods, February 15, 1992, First Edition.	173.469
* * * * * * *	
United States Enrichment Corporation, Inc. (USEC), USEC Inc., 6903 Rockledge Drive, Bethesda, MD 20817	
USEC–651—Good Handling Practices for Uranium Hexafluoride, Revision 8, January 1999	173.417

* * * * *

3. In § 171.11, paragraph (d)(6)(vi) would be removed and paragraphs (d)(6)(iii) and (d)(6)(iv) would be revised to read as follows:

§ 171.11 Use of ICAO Technical Instructions.

* * * * *

(d) * * *

(6)* * *

(iii) Except for excepted packages of Class 7 (radioactive) materials, the provisions of §§ 172.204(c)(4), 173.448(e), (f) and (g)(3) of this subchapter apply.

(iv) Excepted packages of radioactive materials must meet the provisions of §§ 173.421, 173.424 or 173.426 of this subchapter, as appropriate.

* * * * *

4. In § 171.12, paragraphs (d) introductory text and (d)(4) would be revised, the semi-colon at the end of paragraph (d)(5) would be removed and ''; and'' would be added in its place, ''; and'' at the end of paragraph (d)(6) would be removed and a period would be added in its place, and paragraph (d)(7) would be removed to read as follows:

§ 171.12 Import and export shipments.

* * * * *

(d) *Use of International Atomic Energy Agency (IAEA) regulations for Class 7 (radioactive) materials.* Class 7 (radioactive) materials being imported into or exported from the United States, or passing through the United States in the course of being shipped between places outside the United States, may be offered and accepted for transportation when packaged, marked, labeled, and otherwise prepared for shipment in accordance with IAEA ''Regulations for the Safe Transport of Radioactive Material,'' No. TS–R–1 1996 edition (see § 171.7), if—

* * * * *

(4) The country of origin for the shipment has adopted, No. TS–R–1 of the IAEA ''Regulations for the Safe Transport of Radioactive Material,'' 1996 edition;

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

5. The authority citation for part 172 would continue to read as follows:

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

6. In § 172.101, the Hazardous Materials Table would be amended by removing and revising, in appropriate alphabetical sequence, the following entries to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***) Exceptions	Non-bulk	Bulk	(9) Quantity limitations Passenger aircraft/rail	Cargo aircraft only	(10) Vessel stowage Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	*		*		*	*	*		*				
	[REVISE:]												
	Radioactive material, excepted package—articles manufactured from natural uranium *or* depleted uranium *or* natural thorium.	7	UN2909		None		422, 426	422, 426				A	
	*		*		*	*	*		*				
	Radioactive material, excepted package—empty packaging.	7	UN2908		Empty		422, 428	422, 428				A	
	*		*		*	*	*		*				
	Radioactive material, excepted package—instruments *or* articles.	7	UN2911		None		422, 424	422, 424				A	
	*		*		*	*	*		*				
	Radioactive material, low specific activity (LSA–I) *non fissile or fissile-excepted*.	7	UN2912		7	W7	421, 422, 428.	427				A	95
	Radioactive material, low specific activity (LSA–II) *non fissile or fissile-excepted*.	7	UN3321		7	W7	421, 422, 428.	427				A	95
	Radioactive material, low specific activity (LSA–III) *non fissile or fissile-excepted*.	7	UN3322		7	W7	421, 422, 428.	427				A	95
	*		*		*	*	*		*				
	Radioactive material, surface contaminated objects (SCO–I *or* SCO–II) *non fissile or fissile-excepted*.	7	UN2913		7		421, 422, 428.	427				A	95
	Radioactive material, transported under special arrangement, *non fissile or fissile excepted*.	7	UN2919		7	139							
	Radioactive material, transported under special arrangement, fissile.	7	UN3331		7	139							
	Radioactive material, Type A package, fissile *non-special form*.	7	UN3327		7	W7, W8	453	417				A	95
	Radioactive material, Type A package *non-special form, non fissile or fissile-excepted*.	7	UN2915		7	W7, W8		415				A	95
	Radioactive material, Type A package, special form *non fissile or fissile-excepted*.	7	UN3332		7	W7, W8		415, 476				A	95
	Radioactive material, Type A package, special form, fissile.	7	UN3333		7	W7, W8	453	417, 476				A	
	Radioactive material, Type B(M) package, fissile.	7	UN3329		7		453	417				A	
	Radioactive material, Type B(M) package *non fissile or fissile-excepted*.	7	UN2917		7			416				A	95
	Radioactive material, Type B(U) package, fissile.	7	UN3328		7		453	417				A	
	Radioactive material, Type B(U) package *non fissile or fissile excepted*.	7	UN2916		7			416				A	95
	Radioactive material, uranium hexafluoride *non fissile or fissile-excepted*.	7	UN2978		7, 8		423	420				A	95
	Radioactive material, uranium hexafluoride, fissile.	7	UN2977		7, 8		453	417, 420				A	
	*		*		*	*	*		*				
	[REMOVE:]												
D	Radioactive material, excepted package—articles manufactured from natural *or* depleted uranium *or* natural thorium.	7	UN2910		None		422, 426	422, 426	422, 426				A
D	Radioactive material, excepted package—empty package or empty packaging.	7	UN2910		Empty		428	428	428				A
D	Radioactive material, excepted package—instruments *or* articles.	7	UN2910		None		422, 424	422, 424	422, 424			A	

D	Radioactive material, fissile, n.o.s	7	UN2918		7		453	417	417			A	40, 95
D	Radioactive material, low specific activity, n.o.s. *or* Radioactive material, LSA, n.o.s..	7	UN22912		7		421, 428	427	427			A	95
D	Radioactive material, n.o.s	7	UN2982		7		421, 428	415, 416	415, 416			A	40, 95
D	Radioactive material, special form, n.o.s	7	UN2974		7		421, 424	415, 416	415, 416			A	95
D	Radioactive material, surface contaminated object *or* Radioactive material SCO.	7	UN2913		7		421, 424, 426.	427	427			A	95
D	Thorium metal, pyrophoric	7	UN2975		7, 4.2		None	418	None	Forbidden	Forbidden	D	95
D	Thorium nitrate, solid	7	UN2976		7, 5.1		None	419	None	Forbidden	15 kg	A	95
D	Uranium hexafluoride, *fissile excepted or non-fissile*.	7	UN2978		7, 8		423	420, 427	420, 427				
D	Uranium, hexafluoride, fissile (*with more than 1 percent U–235*).	7	UN2977		7, 8		453	417, 420	417, 420			A	95
D	Uranium metal, pyrophoric	7	UN2979		7, 4.2		None	418	None			D	95
D	Uranyl nitrate hexahydrate solution	7	UN2980		7, 8		421, 427	415, 416, 417.	415, 416, 417.			D	95
D	Uranyl nitrate, solid	7	UN2981		7, 5.1		None	419	None	Forbidden	15 kg	A	95

7. In § 172.203, paragraph (d) would be revised to read as follows:

§ 172.203 Additional description requirements.

* * * * *

(d) *Radioactive material.* The description for a shipment of a Class 7 (radioactive) material must include the following additional entries as appropriate:

(1) The name of each radionuclide in the Class 7 (radioactive) material that is listed in § 173.435 of this subchapter. For mixtures of radionuclides, the radionuclides that must be shown must be determined in accordance with § 173.433(f) of this subchapter. Abbreviations, e.g., ''^{99}Mo,'' are authorized.

(2) A description of the physical and chemical form of the material, if the material is not in special form (generic chemical description is acceptable for chemical form).

(3) The activity contained in each package of the shipment in terms of the appropriate SI units (e.g., Becquerels (Bq), Terabecquerels (TBq), etc.). The activity may also be stated in appropriate customary units (Curies (Ci), milliCuries (mCi), microCuries (uCi), etc.) in parentheses following the SI units. Abbreviations are authorized. Except for plutonium-239 and plutonium-241, the weight in grams or kilograms of fissile radionuclides may be inserted instead of activity units. For plutonium-239 and plutonium-241, the weight in grams of fissile radionuclides may be inserted in addition to the activity units.

(4) The category of label applied to each package in the shipment. For example: ''RADIOACTIVE WHITE–I.''

(5) The transport index assigned to each package in the shipment bearing RADIOACTIVE YELLOW–II OR RADIOACTIVE YELLOW–III labels.

(6) For a fissile package:

(i) The words ''Fissile Excepted'' if the package is excepted pursuant to § 173.453 of this subchapter; or

(ii) For a fissile material package, the criticality safety index.

(7) For a package approved by the U.S. Department of Energy (DOE) or U.S. Nuclear Regulatory Commission (USNRC), a notation of the package identification marking as prescribed in the applicable DOE or USNRC approval (see § 173.471 of the subchapter).

(8) For an export shipment or a shipment in a foreign made package, a notation of the package identification marking as prescribed in the applicable International Atomic Energy Agency (IAEA) Certificate of Competent Authority which has been issued for the package (see § 173.473 of the subchapter).

(9) For a shipment required by this subchapter to be consigned as exclusive use:

(i) An indication that the shipment is consigned as exclusive use; or

(ii) If all the descriptions on the shipping paper are consigned as exclusive use, then the statement ''Exclusive Use Shipment'' may be entered only once on the shipping paper in a clearly visible location.

(10) For the shipment of a package containing a highway route controlled quantity of Class 7 (radioactive) materials (see § 173.403 of this subchapter) the words ''Highway route controlled quantity'' must be entered in association with the basic description when all or a portion of the shipment is by highway.

* * * * *

8. In § 172.301, paragraph (a)(1) would be revised to read as follows:

§ 172.301 General marking requirements for non-bulk packages.

(a) *Proper shipping name and identification number.* (1) Except as otherwise provided by this subchapter, each person who offers for transportation a hazardous material in a non-bulk packaging shall mark the package with the proper shipping name and identification number (preceded by ''UN'' or ''NA'', as appropriate) for the material as shown in the § 172.101 Table. Except for Class 7 (radioactive) material, identification numbers are not required on packages which contain only limited quantities, as defined in § 171.8 of this subchapter, or ORM–D materials. Excepted packages of Class 7 (radioactive) material (see §§ 173.421, 173.422, 173.424, 173.426 and 173.428 of this subchapter) must be marked with the identification number but are excepted from the proper shipping name marking requirement.

* * * * *

9. Section 172.310 would be revised to read as follows:

§ 172.310 Class 7 (radioactive) materials.

In addition to any other markings required by this subpart, each package containing Class 7 (radioactive) materials must be marked as follows:

(a) Each package with a gross mass greater than 50 kg (110 lb) must have its gross mass including the unit of measurement (which may be abbreviated) marked on the outside of the package.

(b) Each industrial, Type A, Type B(U), or Type B(M) package must be legibly and durably marked on the outside of the packaging, in letters at least 13 mm (0.5 in) high, with the words ''TYPE IP–1,'' ''TYPE IP–2,'' ''TYPE IP–3,'' ''TYPE A,'' ''TYPE B(U)'' or ''TYPE B(M),'' as appropriate. A package which does not conform to Type IP–1, Type IP–2, Type IP–3, Type A, Type B(U) or Type B(M) requirements may not be so marked.

(c) Each package which conforms to an Industrial Package Type 1, Industrial Package Type 2, Industrial Package Type 3 or a Type A package design must be legibly and durably marked on the outside of the packaging with the international vehicle registration code of the country of origin of the design. The international vehicle registration code for packages designed by a United States company or agency is the symbol ''USA.''

(d) Each package which conforms to a Type B(U) or Type B(M) package design must have the outside of the outermost receptacle, which is resistant to the effects of fire and water, plainly marked by embossing, stamping or other means resistant to the effects of fire and water with a radiation symbol that conforms to the requirements of Appendix B to part 172.

(e) Each Type B(U), Type B(M) or fissile material package destined for export shipment must also be marked ''USA'' in conjunction with the specification marking, or other package certificate identification. (See §§ 173.471, 173.472, and 173.473 of this subchapter.)

10. In § 172.400, in paragraph (b), the table would be amended by adding immediately after the entry for '' 7 RADIOACTIVE YELLOW–III'', the following entry to read as follows:

§ 172.400 General labeling requirements.

* * * * *

(b) * * *

Hazard class or division	Label name	Label design or section reference
* * *		*
7 (fissile material; see § 172.402).	FISSILE	172.441
* * *		*

* * * * *

11. In § 172.402, paragraph (d) would be revised to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(d) *Class 7 (Radioactive) Materials.* Except as otherwise provided in this paragraph (d), each package containing a Class 7 material that also meets the

definition of one or more additional hazard classes must be labeled as a Class 7 material as required by § 172.403 and for each additional hazard.

(1) For a package containing a Class 7 material that also meets the definition of one or more additional hazard classes, whether or not the material satisfies § 173.4(a)(1)(iv) of this subchapter, a subsidiary label is not required on the package if the material conforms to the remaining criteria in § 173.4 of this subchapter.

(2) Each package, overpack, or freight container containing fissile material, other than fissile-excepted material, described in § 173.453 of this subchapter, must bear two FISSILE labels, affixed to opposite sides of the package, which conforms to the figure shown in § 172.441; such labels, where applicable, must be affixed adjacent to the labels for radioactive materials. Overpacks or freight containers containing one or more fissile material packages must bear FISSILE labels. Labels must not cover the markings specified in §§ 172.301, 172.302, and 172.310.

* * * * *

12. In § 172.403, paragraph (e) would be added, paragraphs (g)(1) and (g)(2) would be revised, and paragraph (h) would be added to read as follows:

§ 172.403 Class 7 (radioactive) materials.

* * * * *

(e) *FISSILE label.* For packages required in § 172.402 to bear a FISSILE label, each such label must be completed with the criticality safety index (CSI) assigned in the NRC or DOE package design approval, or in the certificate of approval for special arrangement or the certificate of approval for the package design issued by the Competent Authority for import and export shipments. For overpacks and freight containers required in § 172.402 to bear a FISSILE label, the CSI on the label must be the sum of the CSIs for all of the packages contained in the overpack or freight container.

* * * * *

(g) * * *

(1) *Contents.* Except for LSA–I material, the names of the radionuclides as taken from the listing of radionuclides in § 173.435 of this subchapter (symbols which conform to established radiation protection terminology are authorized, i.e., ^{99}Mo, ^{60}Co, etc.). For mixtures of radionuclides, with consideration of space available on the label, the radionuclides that must be shown must be determined in accordance with § 173.433(f) of this subchapter. For LSA–I material, the term ''LSA–I'' may be used in place of the names of the radionuclides.

(2) *Activity.* The activity in the package must be expressed in appropriate SI units (e.g., Becquerels (Bq), Terabecquerels (TBq), etc.). The activity may also be stated in appropriate customary units (Curies (Ci), milliCuries (mCi), microCuries (uCi), etc.) in parentheses following the SI units. Abbreviations are authorized. Except for plutonium-239 and plutonium-241, the weight in grams or kilograms of fissile radionuclides may be inserted instead of activity units. For plutonium-239 and plutonium-241, the weight in grams of fissile radionuclides may be inserted in addition to the activity units.

* * * * *

(h) When one or more packages of Class 7 (radioactive) material are placed within the same outside container or overpack, the outside container or overpack must be labeled as prescribed in this section, except as follows:

(1) The ''contents'' entry on the label may state ''mixed'' in place of the names of the radionuclides unless each inside package contains the same radionuclide(s).

(2) The ''activity'' entry on the label must be determined by adding together the number of becquerels of the Class 7 (radioactive) materials packages contained therein.

(3) For a non-rigid overpack, the transport index must be determined by adding together the transport indices of the Class 7 (radioactive) materials packages contained therein.

(4) For a rigid overpack, the transport index must be determined by:

(i) Adding together the transport indices of the Class 7 (radioactive) materials packages contained in the overpack; or

(ii) Direct measurements as prescribed in § 173.403 of this subchapter under the definition for ''transport index,'' taken by the person initially offering the packages contained within the overpack for shipment.

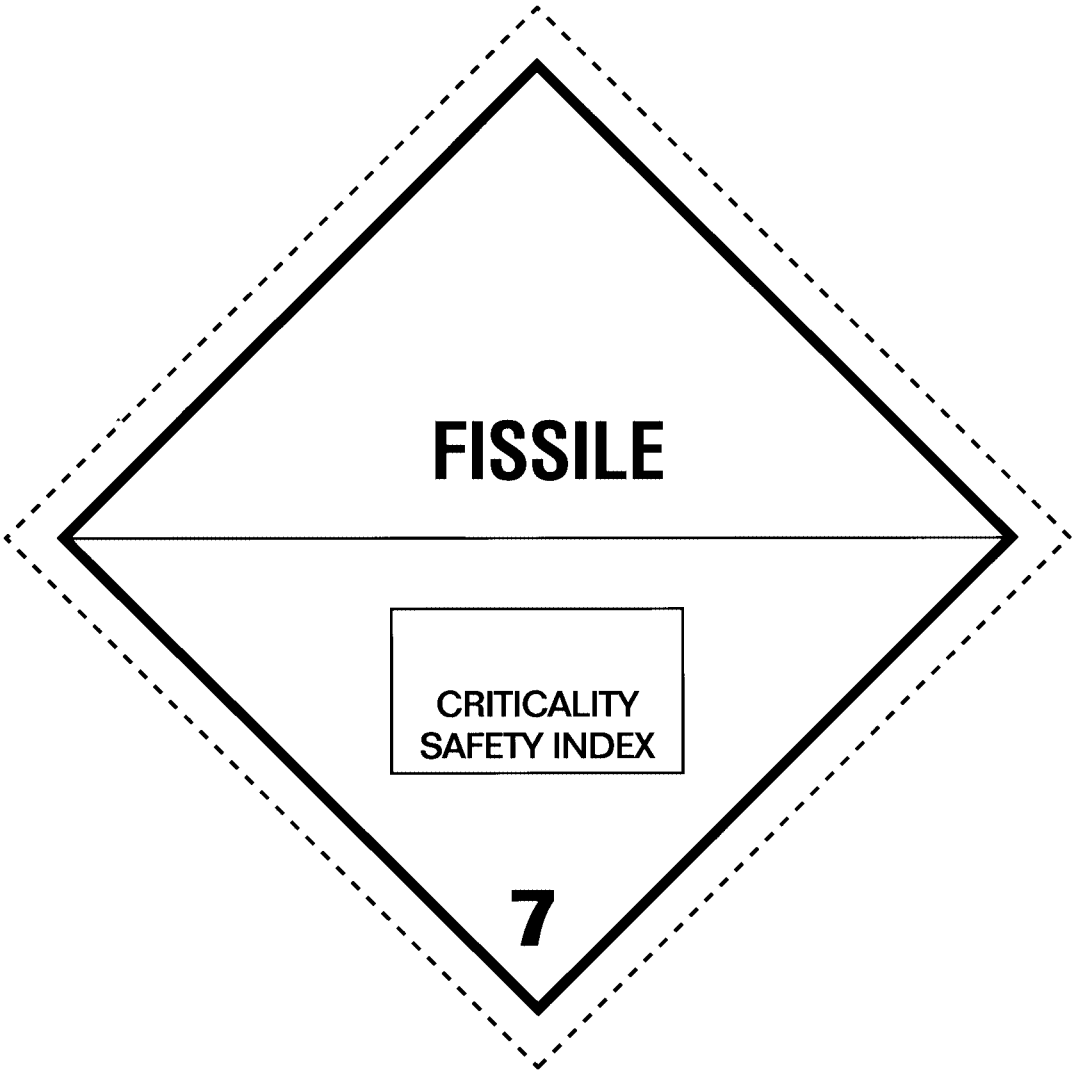
(5) The category of Class 7 label for the overpack must be determined from the table in § 172.403(c) using the TI derived according to paragraph (c)(3) or (c)(4) of this section, and the maximum surface radiation level on the interior package or packages. The maximum radiation level on the external surface of the overpack may be used for this purpose only if the overpack has been demonstrated to satisfy the packaging requirements for the package type appropriate for the totality of its contents.

(6) For fissile material, the criticality safety index which must be entered on the overpack FISSILE label is the sum of the criticality safety indices of the individual packages in the overpack, as stated in the certificate of approval for the package design issued by the U.S. NRC or the U.S. Competent Authority.

13. A new § 172.441 would be added to read as follow:

§ 172.441 FISSILE label.

(a) Except for size and color, the FISSILE label must be as follows:



(b) In addition to complying with § 172.407, the background color on the FISSILE label must be white.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

14. The authority citation for part 173 would continue to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.53.

15. In § 173.401, paragraphs (b)(2) and (b)(3) would be revised and paragraphs (b)(4) would be added to read as follows:

§ 173.401 Scope.

* * * * *

(b) * * *

(2) Class 7 (radioactive) materials that have been implanted or incorporated into a person or live animal for diagnosis or treatment.

(3) Class 7 (radioactive) material that is an integral part of the means of transport.

(4) Natural material and ores containing naturally occurring radionuclides which are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the values specified in § 173.436.

16. In § 173.403, the definitions for ''Fissile material, controlled shipment'' and ''Non-fixed radioactive contamination'' would be removed; definitions for ''Exclusive use,'' ''Fissile material,'' ''Low Specific Activity (LSA) material'' paragraphs (1), (2), and (3), ''Low toxicity alpha emitters,'' ''Maximum normal operating pressure,'' ''Multilateral approval,'' ''Package,'' ''Radioactive contents,'' ''Radioactive material,'' ''Special form Class 7 (radioactive) material,'' ''Surface Contaminated Object (SCO),'' ''Transport index (TI),'' ''Unilateral approval,'' ''Unirradiated uranium,'' and ''Uranium—natural, depleted or enriched'' would be revised; and the definitions for ''Consignment,'' ''Contamination,'' ''Criticality Safety Index (CSI),'' ''Exemption value,'' and ''Quality assurance'' would be added in appropriate alphabetical order, to read as follows:

§ 173.403 Definitions.

* * * * *

Consignment means each shipment of a package or group of packages or load of radioactive material offered by a shipper for transport.

* * * * *

Contamination means the presence of a radioactive substance on a surface in quantities in excess of 0.4 Bq/cm^2 for beta and gamma emitters and low toxicity alpha emitters or 0.04 Bq/cm^2 for all other alpha emitters. Contamination exists in two phases.

(1) *Fixed radioactive contamination* means radioactive contamination that

cannot be removed from a surface during normal conditions of transport.

(2) *Non-fixed radioactive contamination* means radioactive contamination that can be removed from a surface during normal conditions of transport. Non-fixed (removable) radioactive contamination is not significant if it does not exceed the limits specified in § 173.443.

* * * * *

Criticality Safety Index (CSI) means a number which is used to provide control over the accumulation of packages, overpacks or freight containers containing fissile material. The CSI for packages containing fissile material is determined in accordance with the instructions provided in 10 CFR 71.22, 71.23, and 71.59. The CSI for an overpack, freight container, or consignment containing fissile material packages is the arithmetic sum of the criticality safety indices of all the fissile material packages contained within the overpack, freight container, or consignment.

* * * * *

Exclusive use means sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must provide to the initial carrier specific written instructions in writing, for maintenance of exclusive use shipment controls, including the vehicle survey requirement of § 173.443 (c) as applicable, and include them with the shipping paper information provided to the carrier by the consignor.

Exemption value means either an exempt material activity concentration or an exempt consignment activity limit listed in the table in § 173.436, or determined according to the procedures described in § 173.433, and used to determine whether a given physically radioactive material is sufficiently radioactive to be subject to the HMR (see definition of radioactive material). An exemption value is to be distinguished from an exemption, as defined in § 171.8 of this subchapter.

Fissile material means plutonium^{239}, plutonium^{241}, uranium^{233}, uranium^{235}, or any combination of these radionuclides. This term does not apply to material containing fissile nuclides, unirradiated natural uranium and unirradiated depleted uranium, or to natural uranium or depleted uranium that has been irradiated in thermal reactors only.

* * * * *

Low Specific Activity (LSA) material * * *

(1) LSA–I:

(i) Uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radionuclides which are intended to be processed for the use of these radionuclides; or

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures; or

(iii) Radioactive material other than fissile material, for which the A_2 value is unlimited; or

(iv) Other radioactive material, excluding fissile material in quantities not excepted under § 173.453, in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the values for activity concentration specified in § 173.436, or 30 times the default values listed in Table 10B of § 173.433.

(2) LSA–II:

(i) Water with tritium concentration up to 0.8 TBq/L (20.0 Ci/L); or

(ii) Other radioactive material in which the activity is distributed throughout and the average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and 10^{-5} A_2/g for liquids.

(3) LSA–III. Solids (e.g., consolidated wastes, activated materials), excluding powders, that meet the requirements of § 173.468 and which:

(i) The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

(ii) Radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of Class 7 (radioactive) material per package by leaching when placed in water for seven days would not exceed 0.1 A_2; and

(iii) The average specific activity of the solid does not exceed 2×10^{-3} A_2/g.

Low toxicity alpha emitters means natural uranium; depleted uranium; natural thorium; uranium-235 or uranium-238; thorium-232; thorium-228 and thorium-230 when contained in ores or physical and chemical concentrates; and alpha emitters with a half-life of less than 10 days.

Maximum normal operating pressure means the maximum gauge pressure that would develop in a containment system during a period of one year, in the absence of venting or cooling, under the heat conditions specified in 10 CFR 71.71(c)(1).

Multilateral approval means approval of a package design or shipment by the relevant Competent Authority of the country of origin and of each country through or into which the package or shipment is to be transported. This definition does not include approval from a country over which Class 7 (radioactive) materials are carried in aircraft, if there is no scheduled stop in that country.

* * * * *

Package means the packaging together with its radioactive contents as presented for transport.

(1) ''Excepted package'' means a packaging together with its excepted Class 7 (radioactive) materials as specified in §§ 173.421–173.426 and 173.428.

(2) ''Industrial package'' means a packaging that, together with its low specific activity (LSA) material or surface contaminated object (SCO) contents, meets the requirements of §§ 173.410 and 173.411. Industrial packages are categorized in § 173.411 as either:

(i) ''Industrial package Type 1 (IP–1)'';

(ii) ''Industrial package Type 2 (IP–2)''; or

(iii) ''Industrial package Type 3 (IP–3)''.

(3) ''Type A package'' means a packaging that, together with its radioactive contents limited to A_1 or A_2 as appropriate, meets the requirements of §§ 173.410 and 173.412 and is designed to retain the integrity of containment and shielding required by this part under normal conditions of transport as demonstrated by the tests set forth in § 173.465 or § 173.466, as appropriate. A Type A package does not require Competent Authority approval.

(4) ''Type B package'' means a packaging designed to transport greater than an A_1 or A_2 quantity of radioactive material that, together with its radioactive contents, is designed to retain the integrity of containment and shielding required by this part when subjected to the normal conditions of transport and hypothetical accident test conditions set forth in 10 CFR part 71.

(i) ''Type B(U) package'' means a Type B packaging that, together with its radioactive contents, for international shipments requires unilateral approval only of the package design and of any stowage provisions that may be necessary for heat dissipation.

(ii) ''Type B(M) package'' means a Type B packaging, together with its

radioactive contents, that for international shipments requires multilateral approval of the package design, and may require approval of the conditions of shipment. Type B(M) packages are those Type B package designs which have a maximum normal operating pressure of more than 700 kPa/cm^2 (100 lb/in^2) gauge or a relief device which would allow the release of Class 7 (radioactive) material to the environment under the hypothetical accident conditions specified in 10 CFR part 71.

(5) ''Type B(DP) package'' means a dual purpose packaging intended for both the transport and storage of spent fuel, together with its radioactive contents. A package may be used as a Type B(DP) package only if the U.S. Nuclear Regulatory Commission has issued separate Certificates of Compliance for it approving its design as a spent fuel transportation package, in accordance with the requirements of subpart I of 10 CFR part 71, and approving its design as a spent fuel storage cask, in accordance with the requirements of subpart L of 10 CFR part 72.

(6) ''Fissile material package'' means a packaging, together with its fissile material contents, which meets the requirements for fissile material packages described in Subpart E of 10 CFR 71. A fissile material package may be a Type AF package, a Type B(U)F package, a Type B(M)F package, or a Type B(DP) package.

* * * * *

Quality assurance means a systematic program of controls and inspections applied by each person involved in the transport of radioactive material which provides confidence that a standard of safety prescribed in this subchapter is achieved in practice.

* * * * *

Radioactive contents means a Class 7 (radioactive) material, together with any contaminated or activated solids, liquids and gases within the packaging.

* * * * *

Radioactive material means any material containing radionuclides where both the activity concentration and the total activity in the consignment exceed the values specified in the table in § 173.436 or values derived according to the instructions in § 173.433.

Special form Class 7 (radioactive) material means either an indispersible solid radioactive material or a sealed capsule containing radioactive material which satisfies the following conditions:

(1) It is either a single solid piece or a sealed capsule containing radioactive material that can be opened only by destroying the capsule;

(2) The piece or capsule has at least one dimension not less than 5 mm (0.2 in); and

(3) It satisfies the test requirements of § 173.469. Special form encapsulations designed in accordance with the requirements of § 173.389(g) in effect on June 30, 1983 (see 49 CFR part 173, revised as of October 1, 1982), and constructed prior to July 1, 1985 and special form encapsulations designed in accordance with the requirements of § 173.403 in effect on March 31, 1996 (see 49 CFR part 173, revised as of October 1, 1995), and constructed prior to April 1, 1997, may continue to be used. Any other special form encapsulation must meet the requirements of this paragraph (3).

* * * * *

Surface Contaminated Object (SCO) means a solid object which is not itself radioactive but which has radioactive material distributed on its surface. SCO exists in two phases:

(1) SCO–I: A solid object on which:

(i) The non-fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4 Bq/cm^2 (10^{-4} microcurie/cm^2) for beta, gamma and low toxicity alpha emitters, or 0.4 Bq/cm^2 (10^{-5} microcurie/cm^2) for all other alpha emitters;

(ii) The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4×10^4 Bq/cm^2 (1.0 microcurie/cm^2) for beta, gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm^2 (0.1 microcurie/cm^2) for all other alpha emitters; and

(iii) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4x10^4 Bq/cm^2 (1 microcurie/cm^2) for beta, gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm^2 (0.1 microcurie/cm^2) for all other alpha emitters.

(2) SCO–II: A solid object on which the limits for SCO–I are exceeded and on which:

(i) The non-fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 400 Bq/cm^2 (10^{-2} microcurie/cm^2) for beta, gamma and low toxicity alpha emitters, or 40 Bq/cm^2 (10^{-3} microcurie/cm^2) for all other alpha emitters;

(ii) The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8×10^5 Bq/cm^2 (20 microcurie/cm^2) for beta, gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm^2 (2 microcuries/cm^2) for all other alpha emitters; and

(iii) The non-fixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8×10^5 Bq/cm^2 (20 microcuries/cm^2) for beta, gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm^2 (2 microcuries/cm^2) for all other alpha emitters.

Transport index (TI) means the dimensionless number (rounded up to the next tenth) placed on the label of a package, to designate the degree of control to be exercised by the carrier during transportation. The transport index is determined by multiplying the maximum radiation level in millisievert (mSv) per hour at 1 m (3.3 ft) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at 1 m (3.3 ft)).

* * * * *

Unilateral approval means approval of a package design solely by the Competent Authority of the country of origin of the design.

* * * * *

Unirradiated uranium means uranium containing not more than 2×10^3 Bq of plutonium per gram of uranium-235, not more than 9×10^6 Bq of fission products per gram of uranium-235 and not more than 5×10^{-3} g of uranium-236 per gram of uranium-235.

Uranium—natural, depleted or enriched means the following: (1)(i) ''Natural uranium'' means chemically separated uranium containing the naturally occurring distribution of uranium isotopes (approximately 99.28% uranium-238 and 0.72% uranium-235 by mass).

(ii) ''Depleted uranium'' means uranium containing a lesser mass percentage of uranium-235 than in natural uranium.

(iii) ''Enriched uranium'' means uranium containing a greater mass percentage of uranium-235 than 0.72%.

(2) In all cases listed in paragraph (1) of this definition, a very small mass percentage of uranium-234 is present.

17. In § 173.411, paragraph (b)(5)(ii) would be revised to read as follows:

§ 173.411 Industrial packagings.

* * * * *

(b) * * *

(5) * * *

(ii) Be designed to conform to the standards prescribed in ISO 1496–1 : 1990(E) ''Series 1 Freight Containers—Specifications and Testing—Part 1 :

General Cargo Containers,'' excluding dimensions and ratings (see § 171.7 of this subchapter);

* * * * *

18. In § 173.415, paragraphs (a), (c) and (d) would be revised to read as follows:

§ 173.415 Authorized Type A packages.

* * * * *

(a) DOT Specification 7A (see § 178.350 of this subchapter) Type A general packaging. Each offeror of a Specification 7A package must maintain on file for at least one year after the latest shipment, and shall provide to DOT on request, complete documentation of tests and an engineering evaluation or comparative data showing that the construction methods, packaging design, and materials of construction comply with that specification.

* * * * *

(c) Any Type B(U) or Type B(M) packaging authorized pursuant to § 173.416.

(d) Any foreign-made packaging that meets the standards in ''IAEA Regulations for the safe Transport of Radioactive Material No. TS–R–1'' (see § 171.7 of this subchapter) and bears the marking ''Type A'' and was used for the import of Class 7 (radioactive) materials. Such packagings may be subsequently used for domestic and export shipments of Class 7 (radioactive) materials provided the offeror obtains the applicable documentation on file in accordance with paragraph (a) of this section. These packagings must conform with requirements of the country of origin (as indicated by the packaging marking) and the IAEA regulations applicable to Type A packagings.

19. In § 173.416, paragraphs (a), (b), and (c) would be revised and paragraphs (d), (e) and (f) would be removed to read as follows:

§ 173.416 Authorized Type B packages.

* * * * *

(a) Any Type B(U) or Type B(M) packaging that meets the applicable requirements of 10 CFR part 71 and that has been approved by the U.S. Nuclear Regulatory Commission may be shipped pursuant to § 173.471.

(b) Any Type B(U) or B(M) packaging that meets the applicable requirements in ''IAEA Regulations for the Safe Transport of Radioactive Material, No. TS–R–1'' (see § 171.7 of this subchapter) and for which the foreign Competent Authority Certificate has been revalidated by DOT pursuant to § 173.473. These packagings are authorized only for export and import shipments.

(c) Continued use of an existing Type B packaging constructed to DOT Specification 6M, 20WC, or 21WC is authorized until [2 Years From Effective Date of Final Rule] if it conforms in all aspects to the requirements of this subchapter in effect on October 1, 2001.

20. Section 173.417 would be revised to read as follows:

§ 173.417 Authorized fissile materials packages.

(a) Except as provided in § 173.453, fissile materials containing not more than A1 or A2 as appropriate, must be packaged in one of the following packagings: (1)(i) A Class 7 (radioactive) material specified in 10 CFR part 71, subpart C, may be packaged in any packaging listed in § 173.415;

(ii) Any Type AF, Type B(U)F, or Type B(M)F packaging that meets the applicable standards for fissile material packages in 10 CFR part 71; or

(iii) Any Type AF, Type B(U)F, or Type B(M)F packaging that meets the applicable requirements for fissile material packages in Section VI of the International Atomic Energy Agency ''Regulations for the Safe Transport of Radioactive Material, No. TS–R–1 (see § 171.7 of this subchapter),'' and for which the foreign Competent Authority certificate has been revalidated by the U.S. Competent Authority, in accordance with § 173.473. These packages are authorized only for export and import shipments.

(2) Residual ''heels'' of enriched solid uranium hexafluoride may be transported without a protective overpack in any metal cylinder that meets both the requirements of § 173.415 and § 178.350 of this subchapter for Specification 7A Type A packaging, and the requirements of § 173.420 for packagings containing greater than 0.1 kg of uranium hexafluoride. Such shipments must be made in accordance with Table 2, as follows:

TABLE 2.—ALLOWABLE CONTENT OF URANIUM HEXAFLUORIDE (UF_6) ''HEELS'' IN A SPECIFICATION 7A CYLINDER

Maximum cylinder diameter		Cylinder volume		Maximum uranium-235 enrichment (weight) percent	Maximum ''Heel'' weight per cylinder			
					UF6		Uranium-235	
Centimeters	Inches	liters	cubic feet		kg	lb	kg	lb
12.7	5	8.8	0.311	100.0	0.045	0.1	0.031	0.07
20.3	8	39.0	1.359	12.5	0.227	0.5	0.019	0.04
30.5	12	68.0	2.410	5.0	0.454	1.0	0.015	0.03
76.0	30	725.0	25.64	5.0	11.3	25.0	0.383	0.84
122.0	48	3,084.0	[1] 108.9	4.5	22.7	50.0	0.690	1.52
122.0	48	4,041.0	[2] 142.7	4.5	22.7	50.0	0.690	1.52

[1] 10 ton.
[2] 14 ton.

(3) DOT Specification 20PF–1, 20PF–2, or 20PF–3 (see § 178.356 of this subchapter), or Specification 21PF–1A, 21PF–1B, or 21PF–2 (see § 178.358 of this subchapter) phenolic-foam insulated overpack with snug fittings inner metal cylinders, meeting all requirements of §§ 173.24, 173.410, 173.412, and 173.420 and the following:

(i) Handling procedures and packaging criteria must be in accordance with United States Enrichment Corporation Report No. USEC–651 or ANSI N14.1(see § 171.7 of this subchapter); and

(ii) Quantities of uranium hexafluoride are authorized as shown in Table 3 of this section, with each package assigned a minimum criticality safety index as also shown.

(b) Fissile Class 7 (radioactive) materials with radioactive content exceeding A_1 or A_2 must be packaged in one of the following packagings:

(1) Type B(U), Type B(M), or Type B(DP) packaging that meets the standards for packaging of fissile materials in 10 CFR part 71, and is

approved by the U.S. Nuclear Regulatory Commission and used in accordance with § 173.471;

(2) Type B(U) or Type B(M) packaging that also meets the applicable requirements for fissile material packaging in Section VI of the International Atomic Energy Agency ''Regulations for the Safe Transport of Radioactive Material, No. TS-R–1,'' and for which the foreign Competent Authority certificate has been revalidated by the U.S. Competent Authority in accordance with § 173.473. These packagings are authorized only for import and export shipments; or

(3) DOT Specifications 20PF–1, 20PF–2, or 20PF–3 (see § 178.356 of this subchapter), for DOT Specifications 21PF–1A or 21PF–1B (see § 178.356 of this subchapter) phenolic-foam insulated overpack with snug fitting inner metal cylinders, meeting all requirements of §§ 173.24, 173.410, and 173.412, and the following:

(i) Handling procedures and packaging criteria must be in accordance with United States Enrichment Corporation Report No. USEC–651 and ANSI N14.1 (see § 171.7 of this subchapter); and

(ii) Quantities of uranium hexafluoride are authorized as shown in Table 3, with each package assigned a minimum criticality safety index as also shown:

TABLE 3.—AUTHORIZED QUANTITIES OF URANIUM HEXAFLUORIDE

Protective overpack specification number	Maximum inner cylinder diameter		Maximum weight of UF6 contents		Maximum U-235 enrichment (weight/percent)	Minimum criticality safety index
	Centimeters	Inches	Kilograms	Pounds		
20PF–1	12.7	5	25	55	100.0	0.1
20PF–2	20.3	8	116	255	12.5	0.4
20PF–3	30.5	12	209	460	5.0	1.1
21PF–1A[1] or 21PF–1B[1]	[2] 76.0	[2] 30	2,250	4,950	5.0	5.0
21PF–1A[1] or 21PF–1B[1]	[3] 76.0	[3] 30	2,282	5,020	5.0	5.0
21PF–2[1]	[2] 76.0	[2] 30	2,250	4,950	5.0	5.0
21PF–2[1]	[3] 76.0	[3] 30	2,282	5,020	5.0	5.0

[1] For 76 cm (30 in) cylinders, the maximum H/U atomic ratio is 0.088.
[2] Model 30A inner cylinder (reference USEC–651).
[3] Model 30B inner cylinder (reference USEC–651).

(c) Continued use of an existing Type B packaging constructed to DOT Specification 6L, 6M, or 1A2, is authorized until [2 Years From Effective Date of Final Rule] if it conforms in all respect to the requirements of this subchapter in effect on October 1, 2001.

21. Section 173.420 would be revised to read as follows:

§ 173.420 Uranium hexafluoride (fissile, fissile excepted and non-fissile).

(a) In addition to any other applicable requirements of this subchapter, quantities greater than 0.1 kg of fissile, fissile excepted or non-fissile uranium hexafluoride must be offered for transportation as follows:

(1) Before initial filling and during periodic inspection and test, packagings must be cleaned in accordance with American National Standard N14.1 (see § 171.7 of this subchapter) or International Organization for Standardization (ISO) document ISO 7195 (see § 171.7 of this subchapter).

(2) Packagings must be designed, fabricated, inspected, tested and marked in accordance with—

(i) American National Standard N14.1 in effect at the time the packaging was manufactured;

(ii) Specifications for Class DOT–106A multi-unit tank car tanks (see §§ 179.300 and 179.301 of this subchapter);

(iii) International Organization for Standardization (ISO) document 7195; or

(iv) Section VIII, Division I of the ASME Code (see § 171.7 of this subchapter), provided the packaging—

(A) Was manufactured on or before June 30, 1987;

(B) Conforms to the edition of the ASME Code in effect at the time the packaging was manufactured;

(C) Is used within its original design limitations; and

(D) Has shell and head thicknesses that have not decreased below the minimum value specified in the following table:

Packaging model	Minimum thickness; millimeters (inches)
1S, 2S	1.58 (0.062)
5A, 5B, 8A	3.17 (0.125)
12A, 12B	4.76 (0.187)
30B	7.93 (0.312)
48A, F, X, and Y	12.70 (0.500)
48T, O, OM, OM Allied, HX, H, and G	6.35 (0.250)

(3) Each package shall be designed so that it will:

(i) withstand a hydraulic test at an internal pressure of at least 1.4 MPa (200 psi) without leakage and without unacceptable stress;

(ii) withstand the test specified in § 173.465(c) without loss or dispersal of the uranium hexafluoride; and

(iii) withstand the test specified in 10 CFR 71.73(c)(4) without rupture of the containment system.

(4) Uranium hexafluoride must be in solid form.

(5) The volume of solid uranium hexafluoride, except solid depleted uranium hexafluoride, at 20° C (68° F) may not exceed 61% of the certified volumetric capacity of the packaging. The volume of solid depleted uranium hexafluoride at 20° C (68° F) may not exceed 62% of the certified volumetric capacity of the packaging.

(6) The pressure in the package at 20° C (68° F) must be less than 101.3 kPa (14.8 psig).

(b) Packagings for uranium hexafluoride must be periodically inspected, tested, marked and otherwise conform with the American National Standard N14.1or ISO document ISO 7195.

(c) Each repair to a packaging for uranium hexafluoride must be performed in accordance with the American National Standard N14.1 or International Organization for Standardization (ISO) document ISO 7195.

(d) Non-fissile uranium hexafluoride, in quantities of less than 0.1 kg, may be shipped in packaging that meets §§ 173.24, 173.24a, and 173.410.

22. In § 173.421, paragraph (a) introductory text would be revised to read as follows:

§ 173.421 Excepted packages for limited quantities of Class 7 (radioactive) materials.

(a) A Class 7 (radioactive) material with an activity per package which does not exceed the limited quantity package limits specified in Table 7 in § 173.425, and its packaging, are excepted from requirements in this subchapter for specification packaging, labeling, marking (except for the UN identification number), and if not a hazardous substance or hazardous waste, shipping papers, and the requirements of this subpart if:

* * * * *

23. Section 173.422 would be revised to read as follows:

§ 173.422 Additional requirements for excepted packages containing Class 7 (radioactive) materials.

An excepted package of Class 7 (radioactive) material that is classified in accordance with § 173.29 as Class 7, and is prepared for shipment under the provisions of § 173.421, § 173.424, § 173.426, or § 173.428 is not subject to the requirements of this subchapter, except for the following:

(a) The outside of each package must be marked with the identification number for the material as shown in § 172.101 of this subchapter, the Hazardous Materials Table;

(b) Sections 171.15, 171.16, 174.750 and 176.710 of this subchapter, pertaining to the reporting of incidents and decontamination, when transported by a mode other than air;

(c) Sections 171.15, 171.16, and 175.700(b) of this subchapter, pertaining to the reporting of incidents and decontamination, when transported by aircraft; and

(d) The training requirements of subpart H of part 172 of this subchapter and, for materials that meet the definition of a hazardous substance or a hazardous waste, the shipping paper requirements of subpart C of part 172 of this subchapter.

24. Section 173.424 would be revised to read as follows:

§ 173.424 Excepted packages for radioactive instruments and articles.

A radioactive instrument or article and its packaging are excepted from requirements in this subchapter for specification packaging, labeling, marking (except for the UN identification number), and if not a hazardous substance or hazardous waste, shipping papers and the requirements of this subpart if:

(a) Each package meets the general design requirements of § 173.410;

(b) The activity of the instrument or article does not exceed the relevant limit listed in Table 7 in § 173.425;

(c) The total activity per package does not exceed the relevant limit listed in Table 7 in § 173.425;

(d) The radiation level at 10 cm (4 in) from any point on the external surface of any unpackaged instrument or article does not exceed 0.1 mSv/hour (10 mrem/hour);

(e) Each instrument or article (except radio-luminescent time-piece or devices) bears the marking ''RADIOACTIVE';

(f) The active material is completely enclosed by non-active components (a device performing the sole function of containing radioactive material shall not be considered to be an instrument or manufactured article);

(g) The radiation level at any point on the external surface of a package bearing the article or instrument does not exceed 0.005 mSv/hour (0.5 mrem/hour), or, for exclusive use domestic shipments, 0.02 mSv/hour (2 mrem/hour);

(h) The nonfixed (removable) radioactive surface contamination on the external surface of the package does not exceed the limits specified in § 173.443(a);

(i) Except as provided in § 173.426, the package does not contain more than 15 g of uranium-235; and

(j) The package is otherwise prepared for shipment as specified in § 173.422.

25. In § 173.426, the introductory text would be revised to read as follows:

§ 173.426 Excepted packages for articles containing natural uranium or thorium.

A manufactured article in which the sole Class 7 (radioactive) material content is natural uranium, unirradiated depleted uranium or natural thorium, and its packaging, are excepted from the from the requirements in this subchapter for specification packaging, labeling, marking (except for the UN identification number), and if not a hazardous substance or hazardous waste, shipping papers and the requirements of this subpart if:

* * * * *

26. Section 173.427 would be revised to read as follows:

§ 173.427 Transport requirements for low specific activity (LSA) Class 7 (radioactive) materials and surface contaminated objects (SCO).

(a) In addition to other applicable requirements specified in this subchapter, LSA materials and SCO, unless excepted by paragraph (c) or (d) of this section, must be packaged in accordance with paragraph (b) of this section and must be transported in accordance with the following conditions:

(1) The external dose rate may not exceed an external radiation level of 10 mSv/h (1 rem/h) at 3 m from the unshielded material;

(2) The quantity of LSA and SCO material in any single conveyance may not exceed the limits specified in Table 9;

(3) LSA material and SCO that are or contain fissile material must conform to the applicable requirements of § 173.453;

(4) Packages must conform to the contamination control limits specified in § 173.443;

(5) External radiation levels may not exceed those specified in § 173.441; and

(6) For LSA material and SCO consigned as exclusive use:

(i) Shipments shall be loaded by the consignor and unloaded by the consignee from the conveyance or freight container in which originally loaded;

(ii) There may be no loose radioactive material in the conveyance; however, when the conveyance is the packaging, there may not be any leakage of radioactive material from the conveyance;

(iii) Packages must be braced so as to prevent shifting of lading under conditions normally incident to transportation;

(iv) Specific instructions for maintenance of exclusive use shipment controls shall be provided by the offeror to the carrier. Such instructions must be included with the shipping paper information;

(v) Except for shipments of unconcentrated uranium or thorium ores, the transport vehicle must be placarded in accordance with subpart F of part 172 of this subchapter;

(vi) For domestic transportation only, packages containing less than an A2 quantity are excepted from the marking and labeling requirements of this subchapter. However, the exterior of each package must be stenciled or otherwise marked ''RADIOACTIVE—LSA'' or ''RADIOACTIVE—SCO'', as appropriate, and packages that contain a hazardous substance must be stenciled or otherwise marked with the letters ''RQ'' in association with the description in this paragraph (a)(6)(vi); and

(vii) Transportation by aircraft is prohibited except when transported in an industrial package in accordance with Table 8 of this section, or in an authorized Type A or Type B package.

(b) Except as provided in paragraph (c) of this section, LSA material and SCO must be packaged as follows:

(1) In an industrial package (IP–1, IP–2 or IP–3; § 173.411), subject to the limitations of Table 8;

(2) In a DOT Specification 7A (§ 178.350 of this subchapter) Type A package;

(3) In any Type B, B(U), or B(M) packaging authorized pursuant to § 173.416;

(4) For domestic, exclusive use transport of less than an A_2 quantity only, in a packaging which meets the requirements of §§ 173.24, 173.24a, and 173.410;

(5) For exclusive use transport of liquid LSA–I only, in either:

(i) Specification 103CW, 111A60W7 (§§ 179.200, 179.201, 179.202 of this subchapter) tank cars. Bottom openings in tanks are prohibited; or

(ii) Specification MC 310, MC 311, MC 312, MC 331 or DOT 412 (§ 178.348 or § 178.337 of this subchapter) cargo tank motor vehicles. Bottom outlets are not authorized. Trailer-on-flat-car service is not authorized.

(c) LSA material and SCO in groups LSA–I and SCO–I may be transported unpackaged under the following conditions:

(1) All unpackaged material, other than ores containing only naturally occurring radionuclides, shall be transported in such a manner that under normal conditions of transport there will be no escape of the radioactive contents from the conveyance nor will there be any loss of shielding;

(2) Each conveyance must be under exclusive use, except when only transporting SCO–I on which the contamination on the accessible and the inaccessible surfaces is not greater than 4.0 Bq/cm_2 for beta and gamma emitters and low toxicity alpha emitters and 0.4 Bq/cm_2 for all other alpha emitters; and

(3) For SCO–I where it is suspected that non-fixed contamination exists on inaccessible surfaces in excess of the values specified in paragraph (c)(2) of this section, measures shall be taken to ensure that the radioactive material is not released into the conveyance or to the environment.

(d) LSA and SCO that exceed the packaging limits in this section must be packaged in accordance with 10 CFR part 71.

(e) Tables 8 and 9 are as follows:

TABLE 8.—INDUSTRIAL PACKAGE INTEGRITY REQUIREMENTS FOR LSA MATERIAL AND SCO

Contents	Industrial packaging type	
	Exclusive use shipment	Non exclusive use shipment
1. LSA–I:		
Solid	IP–1	IP–1
Liquid	IP–1	IP–2
2. LSA–II:		
Solid	IP–2	IP–2
Liquid and gas	IP–2	IP–3
3. LSA–III	IP–2	IP–3
SCO–I	IP–1	IP–1
SCO–II	IP–2	IP–2

TABLE 9.—CONVEYANCE ACTIVITY LIMITS FOR LSA MATERIAL AND SCO

Nature of material	Activity limit for conveyances
1. LSA–I	No limit.
2. LSA–II and LSA–III; non-Combustible solids.	No limit.
3. LSA–II and LSA–III; Combustible solids and all liquids and gases.	100 A_2.
4. SCO	100 A_2.

27. In § 173.428, the introductory text would be revised, paragraphs (c), (d) and (e) would be redesignated as paragraphs (d), (e) and (f) respectively, and a new paragraph (c) would be added to read as follows:

§ 173.428 Empty Class 7 (radioactive) materials packaging.

A packaging which previously contained Class 7 (radioactive) materials and has been emptied of contents as far as practical, is excepted from the shipping paper, marking (except for the UN identification number) requirements of this subchapter, provided that—

* * * * *

(c) The outer surface of any uranium or thorium in its structure is covered with an inactive sheath made of metal or some other substantial material;

* * * * *

28. In § 173.431, paragraph (b) would be revised to read as follows:

§ 173.431 Activity limits for Type A and Type B packages.

* * * * *

(b) The limits on activity contained in a Type B(U) or Type B(M) package are those prescribed in §§ 173.416 and 173.417, or in the applicable approval certificate under §§ 173.471, 173.472 or 173.473.

29. Section 173.433 would be revised to read as follows:

§ 173.433 Requirements for determining basic radionuclide values, and for the listing of radionuclides on shipping papers and labels.

(a) For individual radionuclides listed in the table in § 173.435 and § 173.436:

(1) A_1 and A_2 values are given in the table in § 173.435; and

(2) Activity concentration exemption values and consignment activity exemption values are given in the table in § 173.436.

(b) For individual radionuclides which are not listed in the tables in § 173.435 or § 173.436, the radionuclide values must be determined in one of the following ways:

(1) Where the chemical form of each radionuclide is known, it is permissible to use the A_2 value related to its solubility class as recommended by the International Commission on Radiological Protection, if the chemical forms under both normal and accident conditions of transport are taken into consideration;

(2) the radionuclide values in Tables 10A or 10B of this section may be used; or

(3) an approval issued by the Associate Administrator or, for international transport, multilateral approval.

(c) In calculating A_1 and A_2 values for a radionuclide not listed in the table in § 173.435, a single radioactive decay chain in which the radionuclides are present in their naturally-occurring proportions, and in which no daughter nuclide has a half life either longer than 10 days or longer than that of the parent nuclide, will be considered as a single radionuclide, and the activity to be taken into account and the A_1 or A_2 value to be applied will be those corresponding to the parent nuclide of that chain. Otherwise, the parent and daughter nuclides will be considered as a mixture of different nuclides.

(d) Mixtures of radionuclides whose identities and respective activities are known must conform to the following conditions:

(1) For special form Class 7 (radioactive) material, the activity which may be transported in a Type A package must satisfy:

$$\sum_i \frac{B(i)}{A_1(i)} \leq 1$$

Where:

B(i) is the activity of radionuclide i in special form; and

$A_1(i)$ is the A_1 value for radionuclide i.

(2) For normal form Class 7 (radioactive) material, the activity

which may be transported in a Type A package must satisfy:

$$\sum_j \frac{C(j)}{A_2(j)} \leq 1$$

Where:

C(j) is the activity of radionuclide j in normal form; and

$A_2(j)$ is the A_2 value for radionuclide j.

(3) If the package contains both special and normal form Class 7 (radioactive) material, the activity which may be transported in a Type A package must satisfy:

$$\sum_i \frac{B(i)}{A_1(i)} + \sum_j \frac{C(j)}{A_2(j)} \leq 1$$

Where:

The symbols are defined as in paragraphs (d)(2) and (d)(3) of this section.

(4) Alternatively, the A_1 value for a mixture of special form material may be determined as follows:

$$A_1 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_1(i)}}$$

Where:

f(i) is the fraction of activity for radionuclide i in the mixture; and

$A_1(i)$ is the appropriate A_1 value for radionuclide i.

(5) Alternatively, the A_2 value for mixtures of normal form material may be determined as follows:

$$A_2 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

Where:

f(i) is the fraction of activity for normal form radionuclide i in the mixture; and

$A_2(i)$ is the appropriate A_2 value for radionuclide i.

(6) The exempt activity concentration for mixtures of nuclides may be determined as follows:

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum_i \frac{f(i)}{[A](i)}}$$

Where:

f(i) is the fraction of activity concentration of nuclide i in the mixture; and

[A](i) is the activity concentration for exempt material containing nuclide i.

(7) The activity limit for an exempt consignment for mixtures of nuclides may be determined as follows:

$$\text{Exempt consignment activity limit for mixture} = \frac{1}{\sum_i \frac{f(i)}{A(i)}}$$

Where:

f(i) is the fraction of activity of nuclide i in the mixture; and

A(i) is the activity limit for exempt consignments for nuclide i.

(e) When the identity of each nuclide is known but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraphs (d)(1) through (d)(5) of this section. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters or beta/gamma emitters, respectively.

(f) When the identity of each nuclide is known but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest [A] (activity concentration for exempt material) or A (activity limit for exempt consignment) value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraphs (d)(6) and (d)(7) of this section. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest [A] or A values for the alpha emitters or beta/gamma emitters, respectively.

(g) *Shipping papers and labeling.* For mixtures of radionuclides, the radionuclides (n) that must be shown on shipping papers and labels in accordance with §§ 172.203 and 172.403 of this subchapter, respectively, must be determined on the basis of the following formula:

$$\sum_{i=1}^{n} \frac{a_{(i)}}{A_{(i)}} \geq 0.95 \sum_{i=1}^{n+m} \frac{a_{(i)}}{A_{(i)}}$$

Where:

n+m represents all the radionuclides in the mixture;

m are the radionuclides that do not need to be considered;

$a_{(1)}$ is the activity of radionuclide i in the mixture; and

$A_{(i)}$ is the $A_1$1 or A_2 value, as appropriate for radionuclide i.

(h) Tables 10A and 10B are as follows:

TABLE 10A.—GENERAL VALUES FOR A_1 AND A_2

Radioactive contents	A_1		A_2	
	(TBq)	(Ci)	(TBq)	(Ci)
1. Only beta or gamma emitting nuclides are known to be present	1	2.7×10^{0}	2×10^{-2}	5.4×10^{-1}
2. Only alpha emitting nuclides are known to be present	2×10^{-1}	5.4×10^{-0}	9×10^{-5}	2.4×10^{-3}

TABLE 10A.—GENERAL VALUES FOR A_1 AND A_2—Continued

Radioactive contents	A_1		A_2	
	(TBq)	(Ci)	(TBq)	(Ci)
3. No relevant data are available.	1×10^{-3}	2.7×10^{-2}	9×10^{-5}	2.4×10^{-3}

TABLE 10B.—GENERAL EXEMPTION VALUES

Radioactive contents	Activity Concentration for Exempt material		Activity limits for exempt consignments	
	(Bq/g	(Ci/g)	(Bq)	(Ci)
1. Only beta or gamma emitting nuclides are known to be present	1×10^{1}	2.7×10^{10}	1×10^{4}	2.7×10^{7}
2. Only alpha emitting nuclides are known to be present	1×10^{1}	2.7×10^{12}	1×10^{3}	2.7×10^{8}
3. No relevant data are available.	1×10^{1}	2.7×10^{-12}	1×10^{3}	2.7×10^{8}

30. Section 173.435 would be revised to read as follows:

§ 173.435 Table of A_1 and A_2 values for radionuclides.

The Table of A_1 and A_2 Values for Radionuclides is as follows:

A_1 AND A_2 VALUES FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Ac-225 (a)	Actinium (89)	8.0×10^{-1}	2.2×10^{1}	6.0×10^{-3}	1.6×10^{-1}	2.1×10^{3}	5.8×10^{4}
Ac-227 (a)		9.0×10^{-1}	2.4×10^{1}	9.0×10^{-5}	2.4×10^{-3}	2.7	7.2×10^{1}
Ac-228		6.0×10^{-1}	1.6×10^{1}	5.0×10^{-1}	1.4×10^{1}	8.4×10^{4}	2.2×10^{6}
Ag-105	Silver (47)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	1.1×10^{3}	3.0×10^{4}
Ag-108m (a)		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	9.7×10^{-1}	2.6×10^{1}
Ag-110m (a)		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.8×10^{2}	4.7×10^{3}
Ag-111		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	5.8×10^{3}	1.6×10^{5}
Al-26	Aluminum (13)	1.0×10^{-1}	2.7	1.0×10^{-1}	2.7	7.0×10^{-4}	1.9×10^{-2}
Am-241	Americium (95)	1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	1.3×10^{-1}	3.4
Am-242m (a)		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	3.6×10^{-1}	1.0×10^{1}
Am-243 (a)		5.0	1.4×10^{2}	1.0×10^{-3}	2.7×10^{-2}	7.4×10^{-3}	2.0×10^{-1}
Ar-37	Argon (18)	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	3.7×10^{3}	9.9×10^{4}
Ar-39		2.0×10^{1}	5.4×10^{2}	4.0×10^{1}	1.1×10^{3}	1.3	3.4×10^{1}
Ar-41		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.5×10^{6}	4.2×10^{7}
As-72	Arsenic (33)	3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	6.2×10^{4}	1.7×10^{6}
As-73		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	8.2×10^{2}	2.2×10^{4}
As-74		1.0	2.7×10^{1}	9.0×10^{-1}	2.4×10^{1}	3.7×10^{3}	9.9×10^{4}
As-76		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	5.8×10^{4}	1.6×10^{6}
As-77		2.0×10^{1}	5.4×10^{2}	7.0×10^{-1}	1.9×10^{1}	3.9×10^{4}	1.0×10^{6}
At-211 (a)	Astatine	2.0×10^{1}	5.4×10^{2}	5.0×10^{-1}	1.4×10^{1}	7.6×10^{4}	2.1×10^{6}
Au-193	Gold (79)	7.0	1.9×10^{2}	2.0	5.4×10^{1}	3.4×10^{4}	9.2×10^{5}
Au-194		1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.5×10^{4}	4.1×10^{5}

A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Au-195	Gold (79)	1.0×10^{1}	2.7×10^{2}	6.0	1.6×10^{2}	1.4×10^{2}	3.7×10^{3}
Au-198		1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	9.0×10^{3}	2.4×10^{5}
Au-199		1.0×10^{1}	2.7×10^{2}	6.0×10^{-1}	1.6×10^{1}	7.7×10^{3}	2.1×10^{5}
Ba-131 (a)	Barium (56)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	3.1×10^{3}	8.4×10^{4}
Ba-133		3.0	8.1×10^{1}	3.0	8.1×10^{1}	9.4	2.6×10^{2}
Ba-133m		2.0×10^{1}	5.4×10^{2}	6.0×10^{-1}	1.6×10^{1}	2.2×10^{4}	6.1×10^{5}
Ba-140 (a)		5.0×10^{-1}	1.4×10^{1}	3.0×10^{-1}	8.1	2.7×10^{3}	7.3×10^{4}
Be-7	Beryllium	2.0×10^{1}	5.4×10^{2}	2.0×10^{1}	5.4×10^{2}	1.3×10^{4}	3.5×10^{5}
Be-10		4.0×10^{1}	1.1×10^{3}	6.0×10^{-1}	1.6×10^{1}	8.3×10^{-4}	2.2×10^{-2}
Bi-205	Bismuth (83)	7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	1.5×10^{-3}	4.2×10^{4}
Bi-206		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	3.8×10^{3}	1.0×10^{5}
Bi-207		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	1.9	5.2×10^{1}
Bi-210		1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	4.6×10^{3}	1.2×10^{5}
Bi-210m (a)		6.0×10^{-1}	1.6×10^{1}	2.0×10^{-2}	5.4×10^{-1}	2.1×10^{-5}	5.7×10^{-4}
Bi-212(a)		7.0×10^{-1}	1.9×10^{1}	6.0×10^{-1}	1.6×10^{1}	5.4×10^{5}	1.5×10^{7}
Bk-247	Berkelium (97)	8.0	2.2×10^{2}	8.0×10^{-4}	2.2×10^{-2}	3.8×10^{-2}	1.0
Bk-249 (a)		4.0×10^{1}	1.1×10^{3}	3.0×10^{-1}	8.1	6.1×10^{1}	1.6×10^{3}
Br-76	Bromine (35)	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	9.4×10^{4}	2.5×10^{6}
Br-77		3.0	8.1×10^{1}	3.0	8.1×10^{1}	2.6×10^{4}	7.1×10^{5}
Brn82		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	4.0×10^{4}	1.1×10^{6}
C-11	Carbon (6)	1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.1×10^{7}	8.4×10^{8}
C-14		4.0×10^{1}	1.1×10^{3}	3.0	8.1×10^{1}	1.6×10^{-1}	4.5
Ca-41	Calcium (20)	Unlimited	Unlimited	Unlimited	Unlimited	3.1×10^{-3}	8.5×10^{-2}
Ca-45		4.0×10^{1}	1.1×10^{3}	1.0	2.7×10^{1}	6.6×10^{2}	1.8×10^{4}
Ca-47 (a)		3.0	8.1×10^{1}	3.0×10^{-1}	8.1	2.3×10^{4}	6.1×10^{5}
Cd-109	Cadmium (48)	3.0×10^{1}	8.1×10^{2}	2.0	5.4×10^{1}	9.6×10^{1}	2.6×10^{3}
Cd-113m		4.0×10^{1}	1.1×10^{3}	5.0×10^{-1}	1.4×10^{1}	8.3	2.2×10^{2}
Cd-115 (a)		3.0	8.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.9×10^{4}	5.1×10^{5}
Cd-115m		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	9.4×10^{2}	2.5×10^{4}
Ce-139	Cerium (58)	7.0	1.9×10^{2}	2.0	5.4×10^{1}	2.5×10^{2}	6.8×10^{3}
Ce-141		2.0×10^{1}	5.4×10^{2}	6.0×10^{-1}	1.6×10^{1}	1.1×10^{3}	2.8×10^{4}
Ce-143		9.0×10^{-1}	2.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.5×10^{4}	6.6×10^{5}
Ce-144		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	1.2×10^{2}	3.2×10^{3}
Cf-248	Californium (98)	4.0×101^{1}	1.1×10^{3}	6.0×10^{-3}	1.6×10^{-1}	5.8×10^{1}	1.6×10^{3}
Cf-249		3.0	8.1×10^{1}	8.0×10^{-4}	2.2×10^{-2}	1.5×10^{-1}	4.1
Cf-250		2.0×10^{1}	5.4×10^{2}	2.0×10^{-3}	5.4×10^{-2}	4.0	1.1×10^{2}

A$_1$ AND A$_2$ VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Cf-251		7.0	1.9×10^{2}	7.0×10^{-4}	1.9×10^{-2}	5.9×10^{-2}	1.6
Cf-252		5.0×10^{-2} (h)	1.35 (h)	3.0×10^{-3} (h)	8.1×10^{-2}	2.0×10^{1}	5.4×10^{2}
Cf-253 (a)		4.0×10^{1}	1.1×10^{3}	4.0×10^{-2}	1.1	1.1×10^{3}	2.9×10^{4}
Cf-254		1.0×10^{-3}	2.7×10^{-2}	1.0×10^{-3}	2.7×10^{-2}	3.1×10^{2}	8.5×10^{3}
Cl-36	Chlorine (17)	1.0×10^{1}	2.7×10^{2}	6.0×10^{-1}	1.6×101^{1}	1.2×10^{-3}	3.3×10^{-2}
Cl-38		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	4.9×10^{6}	1.3×10^{8}
Cm-240	Curium (96)	4.0×10^{1}	1.1×10^{3}	2.0×10^{-2}	5.4×10^{-1}	7.5×10^{2}	2.0×10^{4}
Cm-241		2.0	5.4×10^{1}	1.0	2.7×10^{1}	6.1×10^{2}	1.7×10^{4}
Cm-242	Curium (96)	4.0×10^{1}	1.1×10^{3}	1.0×10^{-2}	2.7×10^{-1}	1.2×10^{2}	3.3×10^{3}
Cm-243		9.0	2.4×10^{2}	1.0×10^{-3}	2.7×10^{-2}	1.9×10^{-3}	5.2×10^{1}
Cm-244		2.0×10^{1}	5.4×10^{2}	2.0×10^{-3}	5.4×10^{-2}	3.0	8.1×10^{1}
Cm-245		9.0	2.4×10^{2}	9.0×10^{-4}	2.4×10^{-2}	6.4×10^{-3}	1.7×10^{-1}
Cm-246		9.0	2.4×10^{2}	9.0×10^{-4}	2.4×10^{-2}	1.1×10^{-2}	3.1×10^{-1}
Cm-247(a)		3.0	8.1×10^{1}	1.0×10^{-3}	2.7×10^{-2}	3.4×10^{-6}	9.3×10^{-5}
Cm-248		2.0×10^{-2}	5.4×10^{-1}	3.0×10^{-4}	8.1×10^{-3}	1.6×10^{-5}	$4.2\times10-^{3}$
Co-55	Cobalt (27)	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	1.1×10^{5}	3.1×10^{6}
Co-56		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.1×10^{3}	3.0×10^{4}
Co-57		1.0×10^{1}	2.7×10^{2}	1.0×10^{1}	2.7×10^{2}	3.1×10^{2}	8.4×10^{3}
Co-58		1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.2×10^{3}	3.2×10^{4}
Co-58m		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	2.2×10^{5}	5.9×10^{6}
Co-60		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	4.2×10^{1}	1.1×10^{3}
Cr-51	Chromium (24)	3.0×10^{1}	8.1×10^{2}	3.0×10^{1}	8.1×10^{2}	3.4×10^{3}	9.2×10^{4}
Cs-129	Cesium (55)	4.0	1.1×10^{2}	4.0	1.1×10^{2}	2.8×10^{4}	7.6×10^{5}
Cs-131		3.0×10^{1}	8.1×10^{2}	3.0×10^{1}	8.1×10^{2}	3.8×10^{3}	1.0×10^{5}
Cs-132		1.0	2.7×10^{1}	1.0	2.7×10^{1}	5.7×10^{3}	1.5×10^{5}
Cs-134		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	4.8×10^{1}	1.3×10^{3}
Cs-134m		4.0×10^{1}	1.1×10^{3}	6.0×10^{-1}	1.6×10^{1}	3.0×10^{5}	8.0×10^{6}
Cs-135		4.0×10^{1}	1.1×10^{3}	1.0	2.7×10^{1}	4.3×10^{-5}	1.2×10^{-3}
Cs-136		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	2.7×10^{-3}	7.3×10^{4}
Cs-137 (a)		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.2	8.7×10^{1}
Cu-64	Copper (29)	6.0	1.6×10^{2}	1.0	2.7×10^{1}	1.4×10^{5}	3.9×10^{6}
Cu-67		1.0×10^{1}	2.7×10^{2}	7.0×10^{-1}	1.9×10^{1}	2.8×10^{4}	7.6×10^{5}
Dy-159	Dysprosium (66)	2.0×10^{1}	5.4×10^{2}	2.0×10^{1}	5.4×10^{2}	2.1×10^{2}	5.7×10^{3}
Dy-165		9.0×10^{-1}	2.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.0×10^{5}	8.2×10^{6}
Dy-166(a)		9.0×10^{-1}	2.4×10^{1}	3.0×10^{-1}	8.1	8.6×10^{3}	2.3×10^{5}
Er-169	Erbium (68)	4.0×10^{1}	1.1×10^{3}	1.0	2.7×10^{1}	3.1×10^{3}	8.3×10^{4}

A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Er-171		8.0×10^{-1}	2.2×10^{1}	5.0×10^{-1}	1.4×10^{1}	9.0×10^{4}	2.4×10^{6}
Eu-147 (63)	Europium	2.0	5.4×10^{1}	2.0	5.4×10^{1}	1.4×10^{3}	3.7×10^{4}
Eu-148		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	6.0×10^{2}	1.6×10^{4}
Eu-149		2.0×10^{1}	5.4×10^{2}	2.0×10^{1}	5.4×10^{2}	3.5×10^{2}	9.4×10^{3}
Eu-150 (short lived)		2.0	5.4×10^{1}	7.0×10^{-1}	1.9×10^{1}	6.1×10^{4}	1.6×10^{6}
Eu-150 (long lived)		2.0	5.4×10^{1}	7.0×10^{-1}	1.9×10^{1}	6.1×10^{4}	1.6×10^{6}
Eu-152		1.0	2.7×10^{1}	1.0	2.7×10^{1}	6.5	1.8×10^{2}
Eu-152m		8.0×10^{-1}	2.2×10^{1}	8.0×10^{-1}	2.2×10^{1}	8.2×10^{4}	2.2×10^{6}
Eu-154		9.0×10^{-1}	2.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	9.8	2.6×10^{2}
Eu-155		2.0×10^{1}	5.4×10^{2}	3.0	8.1×10^{1}	1.8×10^{1}	4.9×10^{2}
Eu-156		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	2.0×10^{3}	5.5×10^{4}
F–18	Fluorine	1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.5×10^{6}	9.5×10^{7}
Fe-52 (a)	Iron (26)	3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	2.7×10^{5}	7.3×10^{6}
Fe-55		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	8.8×10^{1}	2.4×10^{3}
Fe-59		9.0×10^{-1}	2.4×10^{1}	9.0×10^{-1}	2.4×10^{1}	1.8×10^{3}	5.0×10^{4}
Fe-60 (a)		4.0×10^{1}	1.1×10^{3}	2.0×10^{-1}	5.4	7.4×10^{-4}	2.0×10^{-2}
Ga-67	Gallium (31)	7.0	1.9×10^{2}	3.0	8.1×10^{1}	2.2×10^{4}	6.0×10^{5}
Ga-68		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	1.5×10^{6}	4.1×10^{7}
Ga-72		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.1×10^{5}	3.1×10^{6}
Gd-146 (a)	Gadolinium (64)	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	6.9×10^{2}	1.9×10^{4}
Gd-148		2.0×10^{1}	5.4×10^{2}	2.0×10^{-3}	5.4×10^{-2}	1.2	3.2×10^{1}
Gd-153		1.0×10^{1}	2.7×10^{2}	9.0	2.4×10^{2}	1.3×10^{2}	3.5×10^{3}
Gd-159		3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.9×10^{4}	1.1×10^{6}
Ge-68 (a)	Germanium (32)	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	2.6×10^{2}	7.1×10^{3}
Ge-71		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	5.8×10^{3}	1.6×10^{5}
Ge-77		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.3×10^{5}	3.6×10^{6}
Hf-172	Hafnium (72)	6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	4.1×10^{1}	1.1×10^{3}
Hf-175		3.0	8.1×10^{1}	3.0	8.1×10^{1}	3.9×10^{2}	1.1×10^{4}
Hf-181		2.0	5.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	6.3×10^{2}	1.7×10^{4}
Hf-182		Unlimited	Unlimited	Unlimited	Unlimited	8.1×10^{-6}	2.2×10^{-4}
Hg-194 (a)	Mercury (80)	1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.3×10^{-1}	3.5
Hg-195m (a)		3.0	8.1×10^{1}	7.0×10^{-1}	1.9×10^{1}	1.5×10^{4}	4.0×10^{5}
Hg-197		2.0×10^{1}	5.4×10^{2}	1.0×10^{1}	2.7×10^{2}	9.2×10^{3}	2.5×10^{5}
Hg-197m		1.0×10^{1}	2.7×10^{2}	4.0×10^{-1}	1.1×10^{1}	2.5×10^{4}	6.7×10^{5}
Hg-203		5.0	1.4×10^{2}	1.0	2.7×10^{1}	5.1×10^{2}	1.4×10^{4}
Ho-166	Holmium	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	2.6×10^{4}	7.0×10^{5}

A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Ho-166m		6.0×10^{-1}	1.6×10^{1}	5.0×10^{-1}	1.4×10^{1}	6.6×10^{-2}	1.8
I–123	Iodine (53)	6.0	1.6×10^{2}	3.0	8.1×10^{1}	7.1×10^{4}	1.9×10^{6}
I–124		1.0	2.7×10^{1}	1.0	2.7×10^{1}	9.3×10^{3}	2.5×10^{5}
I–125		2.0×10^{1}	5.4×10^{2}	3.0	8.1×10^{1}	6.4×10^{2}	1.7×10^{4}
I–126		2.0	5.4×10^{1}	1.0	2.7×10^{1}	2.9×10^{3}	8.0×10^{4}
I–129		Unlimited	Unlimited	Unlimited	Unlimited	6.5×10^{-6}	1.8×10^{-4}
I–131		3.0	8.1×10^{1}	7.0×10^{-1}	1.9×10^{1}	4.6×10^{3}	1.2×10^{5}
I–132		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	3.8×10^{5}	1.0×10^{7}
I–133		7.0×10^{-1}	1.9×10^{1}	6.0×10^{-1}	1.6×10^{1}	4.2×10^{4}	1.1×10^{6}
I–134		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	9.9×10^{5}	2.7×10^{7}
I-135 (a)		6.0×101^{-1}	1.6×10^{-1}	6.0×10^{-1}	1.6×10^{1}	1.3×10^{5}	3.5×10^{6}
In-111	Indium (49)	3.0	8.1×10^{1}	3.0	8.1×10^{1}	1.5×10^{4}	4.2×10^{5}
In-113m		4.0	1.1×10^{2}	2.0	5.4×10^{1}	6.2×10^{5}	1.7×10^{7}
In-114m (a)		1.0×10^{1}	2.7×10^{2}	5.0×10^{-1}	1.4×10^{1}	8.6×10^{2}	2.3×10^{4}
In-115m		7.0	1.9×10^{2}	1.0	2.7×10^{1}	2.2×10^{5}	6.1×10^{6}
Ir-189 (a)	Iridium (77)	1.0×10^{1}	2.7×10^{2}	1.0×10^{1}	2.7×10^{2}	1.9×10^{3}	5.2×10^{4}
Ir-190		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	2.3×10^{3}	6.2×10^{4}
Ir-192		1.0 (c)	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.4×10^{2}	9.2×10^{3}
Ir-194		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	3.1×10^{4}	8.4×10^{5}
K-40	Potassium (19)	9.0×10^{-1}	2.4×10^{1}	9.0×10^{-1}	2.4×10^{1}	2.4×10^{-7}	6.4×10^{-6}
K-42		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	2.2×10^{5}	6.0×10^{6}
K-43		7.0×10^{-1}	1.9×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.2×10^{5}	3.3×10^{6}
Kr-81	Krypton (36)	4.0×10^{-1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	7.8×10^{-4}	2.1×10^{-2}
Kr-85		1.0×10^{1}	2.7×10^{2}	1.0×10^{2}	2.7×10^{2}	1.5×10^{1}	3.9×10^{2}
Kr-85m		8.0	2.2×10^{2}	3.0	8.1×10^{1}	3.0×10^{5}	8.2×10^{6}
Kr-87		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	1.0×10^{6}	2.8×10^{7}
La-137	Lanthanum (57)	3.0×10^{1}	8.1×10^{2}	6.0	1.6×10^{2}	1.6×10^{-3}	4.4×10^{-2}
La-140		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{-1}	2.1×10^{4}	5.6×10^{5}
Lu-172	Lutetium (71)	6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	4.2×10^{3}	1.1×10^{5}
Lu-173		8.0	2.2×10^{2}	8.0	2.2×10^{2}	5.6×10^{1}	1.5×10^{3}
Lu-174		9.0	2.4×10^{2}	9.0	2.4×10^{2}	2.3×10^{1}	6.2×10^{2}
Lu-174m		2.0×10^{1}	5.4×10^{2}	1.0×10^{1}	2.7×10^{2}	2.0×10^{2}	5.3×10^{3}
Lu-177		3.0×10^{1}	8.1×10^{2}	7.0×10^{1}	1.9×10^{1}	4.1×10^{3}	1.1×10^{5}
Mg-28 (a)	Magnesium	3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	2.0×10^{5}	5.4×10^{6}
Mn-52	Manganese (25)	3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.6×10^{4}	44.4×10^{5}
Mn-53		Unlimited	Unlimited	Unlimited	Unlimited	6.8×10^{-5}	1.8×10^{-3}
Mn-54		1.0	2.7×10^{1}	1.0	2.7×10^{1}	2.9×10^{2}	7.7×10^{3}
Mn-56		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	8.0×10^{5}	2.2×10^{7}
Mo-93	Molybdenum (42)	4.0×10^{1}	1.1×10^{3}	2.0×10^{1}	5.4×10^{2}	4.1×10^{-2}	1.1
Mo-99 (a)		1.0	2.7×10^{1}	6.0×10^{-1}(i)	1.6×10^{1}(i)	1.8×10^{4}	4.8×10^{-5}
N-13	Nitrogen (7)	9.0×10^{-1}	2.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	5.4×10^{7}	1.5×10^{9}
Na-22	Sodium (11)	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	2.3×10^{2}	6.3×10^{3}
Na-24		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	3.2×10^{5}	8.7×10^{6}

A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Nb-93m	Niobium (41)	4.0×10^{1}	1.1×10^{3}	3.0×10^{1}	8.1×10^{2}	8.8	2.4×10^{2}
Nb-94		7.0×10^{-1}	1.9×10^{-1}	7.0×10^{-1}	1.9×10^{1}	6.9×10^{-3}	1.9×10^{-1}
Nb-95		1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.5×10^{3}	3.9×10^{4}
Nb-97		9.0×10^{-1}	2.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	9.9×10^{5}	2.7×10^{7}
Nd-147	Neodymium (60)	6.0	1.6×10^{2}	6.0×10^{-1}	1.6×10^{1}	3.0×10^{3}	8.1×10^{4}
Nd-149		6.0×10^{-1}	1.6×10^{1}	5.0×10^{-1}	1.4×10^{1}	4.5×10^{5}	1.2×10^{7}
Ni-59	Nickel (28)	Unlimited	Unlimited	Unlimited	Unlimited	3.0×10^{-3}	8.0×10^{-2}
Ni-63		4.0×10^{1}	1.1×10^{3}	3.0×10^{1}	8.1×10^{2}	2.1	5.7×10^{1}
Ni-65		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	7.1×10^{5}	1.9×10^{7}
Np-235	Neptunium (93)	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	5.2×10^{1}	1.4×10^{3}
Np-236 (short-lived)		2.0×10^{1}	5.4×10^{2}	2.0	5.4×10^{1}	4.7×10^{-4}	1.3×10^{-2}
Np-236 (long-lived)		2.0×10^{1}	5.4×10^{2}	2.0	5.4×10^{1}	4.7×10^{-4}	1.3×10^{-2}
Np-237		2.0×10^{1}	5.4×10^{2}	2.0×10^{-3}	5.4×10^{2}	2.6×10^{-5}	7.1×10^{-4}
Np-239		7.0	1.9×10^{2}	4.0×10^{-1}	1.1×10^{1}	8.6×10^{3}	2.3×10^{5}
Os-185	Osmium (76)	1.0	2.7×10^{1}	1.0	2.7×10^{1}	2.8×10^{2}	7.5×10^{3}
Os-191		1.0×10^{1}	2.7×10^{2}	2.0	5.4×10^{1}	1.6×10^{3}	4.4×10^{4}
Os-191m		4.0×10^{1}	1.1×10^{3}	3.0×10^{1}	8.1×10^{2}	4.6×10^{4}	1.3×10^{6}
Os-193		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.0×10^{4}	5.3×10^{5}
Os-194(a)		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.1×10^{1}	3.1×10^{2}
P–32	Phosphorus (15)	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	1.1×10^{4}	2.9×10^{5}
P–33		4.0×10^{1}	1.1×10^{3}	1.0	2.7×10^{1}	5.8×10^{3}	1.6×10^{5}
Pa-230(a)	Protactinium(91)	2.0	5.4×10^{1}	7.0×10^{-2}	1.9	1.2×10^{3}	3.3×10^{4}
Pa-231		4.0	1.1×10^{2}	4.0×10^{-4}	1.1×10^{-2}	1.7×10^{-3}	4.7×10^{-2}
Pa-233		5.0	1.4×10^{2}	7.0×10^{-1}	1.9×10^{1}	7.7×10^{2}	2.1×10^{4}
Pb-201	Lead (82)	1.0	2.7×10^{1}	1.0	2.7×10^{1}	6.2×10^{4}	1.7×10^{6}
Pb-202		4.0×10^{1}	1.1×10^{3}	2.0×10^{1}	5.4×10^{2}	1.2×10^{-4}	3.4×10^{-3}
Pb-203		4.0	1.1×10^{2}	3.0	8.1×10^{1}	1.1×10^{4}	3.0×10^{5}
Pb-205		Unlimited	Unlimited	Unlimited	Unlimited	4.5×10^{-6}	1.2×10^{-4}
Pb-210(a)		1.0	2.7×10^{1}	5.0×10^{-2}	1.4	2.8	7.6×10^{1}
Pb-212(a)		7.0×10^{-1}	1.9×10^{1}	2.0×10^{-1}	5.4	5.1×10^{4}	1.4×10^{6}
Pd-103(a)	Palladium(46)	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	2.8×10^{3}	7.5×10^{4}
Pd-107		Unlimited	Unlimited	Unlimited	Unlimited	1.9×10^{-5}	5.1×10^{-4}
Pd-109		2.0	5.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	7.9×10^{4}	2.1×10^{6}
Pm-143	Promethium(61)	3.0	8.1×10^{1}	3.0	8.1×10^{1}	1.3×10^{2}	3.4×10^{3}
Pm-144		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	9.2×10^{1}	2.5×10^{3}
Pm-145		3.0×10^{1}	8.1×10^{2}	1.0×10^{1}	2.7×10^{2}	5.2	1.4×10^{2}

A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Pm-147		4.0×10^{1}	1.1×10^{3}	2.0	5.4×10^{1}	3.4×10^{1}	9.3×10^{2}
Pm-148m (a)		8.0×10^{-1}	2.2×10^{1}	7.0×10^{-1}	1.9×10^{1}	7.9×10^{2}	2.1×10^{4}
Pm-149		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.5×10^{4}	4.0×10^{5}
Pm-151		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.7×10^{4}	7.3×10^{5}
Po-210	Polonium (84)	4.0×10^{1}	1.1×10^{3}	2.0×10^{-2}	5.4×10^{-1}	1.7×10^{2}	4.5×10^{3}
Pr-142	Praseodymium (59)	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	4.3×10^{4}	1.2×10^{6}
Pr-143		3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.5×10^{3}	6.7×10^{4}
Pt-188 (a)	Platinum (78)	1.0	2.7×10^{1}	8.0×10^{-1}	2.2×10^{1}	2.5×10^{3}	6.8×10^{4}
Pt-191		4.0	1.1×10^{2}	3.0	8.1×10^{1}	8.7×10^{3}	2.4×10^{5}
Pt-193		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	1.4	3.7×10^{1}
Pt-193m		4.0×10^{1}	1.1×10^{3}	5.0×10^{-1}	1.4×10^{1}	5.8×10^{3}	1.6×10^{5}
Pt-195m		1.0×10^{1}	2.7×10^{2}	5.0×10^{-1}	1.4×10^{1}	6.2×10^{3}	1.7×10^{5}
Pt-197		2.0×10^{1}	5.4×10^{2}	6.0×10^{-1}	1.6×10^{1}	3.2×10^{4}	8.7×10^{5}
Pt-197m		1.0×10^{1}	2.7×10^{2}	6.0×10^{1}	1.6×10^{1}	3.7×10^{5}	1.0×10^{7}
Pu-236	Plutonium (94)	3.0×10^{1}	8.1×10^{2}	3.0×10^{-3}	8.1×10^{-2}	2.0×10^{1}	5.3×10^{2}
Pu-237		2.0×10^{1}	5.4×10^{2}	2.0×10^{1}	5.4×10^{2}	4.5×10^{2}	1.2×10^{4}
Pu-238		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	6.3×10^{-1}	1.7×10^{1}
Pu-239		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	2.3×10^{-3}	6.2×10^{-2}
Pu-240		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	8.4×10^{-3}	2.3×10^{-2}
Pu-241 (a)		4.0×10^{1}	1.1×10^{3}	6.0×10^{-2}	1.6	3.8	1.0×10^{2}
Pu-242		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	1.5×10^{-4}	3.9×10^{-3}
Pu-244 (a)		4.0×10^{-1}	1.1×10^{1}	1.0×10^{-3}	2.7×10^{-2}	6.7×10^{-7}	1.8×10^{-5}
Ra-223 (a)	Radium (88)	4.0×10^{-1}	1.1×10^{1}	7.0×10^{-3}	1.9×10^{-1}	1.9×10^{3}	5.1×10^{4}
Ra-224 (a)		4.0×10^{-1}	1.1×10^{1}	2.0×10^{-2}	5.4×10^{-1}	5.9×10^{3}	1.6×10^{5}
Ra-225 (a)		2.0×10^{-1}	5.4	4.0×10^{-3}	1.1×10^{-1}	1.5×10^{3}	3.9×10^{4}
Ra-226 (a)		2.0×10^{-1}	5.4	3.0×10^{-3}	8.1×10^{-2}	3.7×10^{-2}	1.0
Ra-228 (a)		6.0×10^{-1}	1.6×10^{1}	2.0×10^{-2}	5.4×10^{-1}	1.0×10^{1}	2.7×10^{2}
Rb-81	Rubidium (37)	2.0	5.4×10^{1}	8.0×10^{-1}	2.2×10^{1}	3.1×10^{5}	8.4×10^{6}
Rb-83 (a)		2.0	5.4×10^{1}	2.0	5.4×10^{1}	6.8×10^{2}	1.8×10^{4}
Rb-84		1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.8×10^{3}	4.7×10^{4}
Rb-86		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	3.0×10^{3}	8.1×10^{4}
Rb-87		Unlimited	Unlimited	Unlimited	Unlimited	3.2×10^{-9}	8.6×10^{-8}
Rb(nat)		Unlimited	Unlimited	Unlimited	Unlimited	6.7×10^{6}	1.8×10^{8}
Re-184	Rhenium (75)	1.0	2.7×10^{1}	1.0	2.7×10^{1}	6.9×10^{2}	1.9×10^{4}
Re-184m		3.0	8.1×10^{1}	1.0	2.7×10^{1}	1.6×10^{2}	4.3×10^{3}
Re-186		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	6.9×10^{3}	1.9×10^{5}
Re-187		Unlimited	Unlimited	Unlimited	Unlimited	1.4×10^{-9}	3.8×10^{-8}

A$_1$ AND A$_2$ VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Re-188		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	3.6×10^{4}	9.8×10^{5}
Re-189 (a)		3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.5×10^{4}	6.8×10^{5}
Re(nat)		Unlimited	Unlimited	Unlimited	Unlimited	0.0	2.4×10^{-8}
Rh-99	Rhodium (45)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	3.0×10^{3}	8.2×10^{4}
Rh-101		4.0	1.1×10^{2}	3.0	8.1×10^{1}	4.1×10^{1}	1.1×10^{3}
Rh-102		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	4.5×10^{1}	1.2×10^{3}
Rh-102m		2.0	5.4×10^{1}	2.0	5.4×10^{1}	2.3×10^{2}	6.2×10^{3}
Rh-103m		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	1.2×10^{6}	3.3×10^{7}
Rh-105		1.0×10^{1}	2.7×10^{2}	8.0×10^{-1}	2.2×10^{1}	3.1×10^{4}	8.4×10^{5}
Rn-222 (a)	Radon (86)	3.0×10^{-1}	8.1	4.0×10^{-3}	1.1×10^{-1}	5.7×10^{3}	1.5×10^{5}
Ru-97	Ruthenium (44)	5.0	1.4×10^{2}	5.0	1.4×10^{2}	1.7×10^{4}	4.6×10^{5}
Ru-103 (a)		2.0	5.4×10^{1}	2.0	5.4×10^{1}	1.2×10^{3}	3.2×10^{4}
Ru-105		1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.5×10^{5}	6.7×10^{6}
Ru-106 (a)		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	1.2×10^{2}	3.3×10^{3}
S-35	Sulphur (16)	4.0×10^{1}	1.1×10^{3}	3.0	8.1×10^{1}	1.6×10^{3}	4.3×10^{4}
Sb-122	Antimony (51)	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.5×10^{4}	4.0×10^{5}
Sb-124		6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	6.5×10^{2}	1.7×10^{4}
Sb-125		2.0	5.4×10^{1}	1.0	2.7×10^{1}	3.9×10^{1}	1.0×10^{3}
Sb-126		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	3.1×10^{3}	8.4×10^{4}
Sc-44	Scandium (21)	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	6.7×10^{5}	1.8×10^{7}
Sc-46		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	1.3×10^{3}	3.4×10^{4}
Sc-47		1.0×10^{1}	2.7×10^{2}	7.0×10^{-1}	1.9×10^{1}	3.1×10^{4}	8.3×10^{5}
Sc-48		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	5.5×10^{4}	1.5×10^{6}
Se-75	Selenium (34)	3.0	8.1×10^{1}	3.0	8.1×10^{1}	5.4×10^{2}	1.5×10^{4}
Se-79		4.0×10^{1}	1.1×10^{3}	2.0	5.4×10^{1}	2.6×10^{-3}	7.0×10^{-2}
Si-31	Silicon (14)	6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.4×10^{6}	3.9×10^{7}
Si-32		4.0×10^{1}	1.1×10^{3}	5.0×10^{-1}	1.4×10^{1}	3.9	1.1×10^{2}
Sm-145	Samarium (62)	1.0×10^{1}	2.7×10^{2}	1.0×10^{1}	2.7×10^{2}	9.8×10^{1}	2.6×10^{3}
Sm-147		Unlimited	Unlimited	Unlimited	Unlimited	8.5×10^{-1}	2.3×10^{-8}
Sm-151		4.0×10^{1}	1.1×10^{3}	1.0×10^{1}	2.7×10^{2}	9.7×10^{-1}	2.6×10^{1}
Sm-153		9.0	2.4×10^{2}	6.0×10^{-1}	1.6×10^{1}	1.6×10^{4}	4.4×10^{5}
Sn-113 (a)	Tin (50)	4.0	1.1×10^{2}	2.0	5.4×10^{1}	3.7×10^{2}	1.0×10^{4}
Sn-117m		7.0	1.9×10^{2}	4.0×10^{-1}	1.1×10^{1}	3.0×10^{3}	8.2×10^{4}
Sn-119m		4.0×10^{1}	1.1×10^{3}	3.0×10^{1}	8.1×10^{2}	1.4×10^{2}	3.7×10^{3}
Sn-121m (a)		4.0×10^{1}	1.1×10^{3}	9.0×10^{-1}	2.4×10^{1}	2.0	5.4×10^{1}
Sn-123		8.0×10^{-1}	2.2×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.0×10^{2}	8.2×10^{3}

A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Sn-125		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	4.0×10^{3}	1.1×10^{5}
Sn-126 (a)		6.0×10^{-1}	1.6×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.0×10^{-3}	2.8×10^{-2}
Sr-82 (a)	Strontium (38)	2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	2.3×10^{3}	6.2×10^{4}
Sr-85		2.0	5.4×10^{1}	2.0	5.4×10^{1}	8.8×10^{2}	2.4×10^{4}
Sr-85m		5.0	1.4×10^{2}	5.0	1.4×10^{2}	1.2×10^{6}	3.3×10^{7}
Sr-87m		3.0	8.1×10^{1}	3.0	8.1×10^{1}	4.8×10^{5}	1.3×10^{7}
Sr-89		6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.1×10^{3}	2.9×10^{4}
Sr-90 (a)		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	5.1	1.4×10^{2}
Sr-91 (a)		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.3×10^{5}	3.6×10^{6}
Sr-92 (a)		1.0	2.7×10^{1}	3.0×10^{-1}	8.1	4.7×10^{5}	1.3×10^{7}
T(H–3)	Tritium (1)	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	3.6×10^{2}	9.7×10^{3}
Ta-178 (long-lived)	Tantalum (73)	1.0	2.7×10^{1}	8.0×10^{-1}	2.2×10^{1}	4.2×10^{6}	1.1×10^{8}
Ta-179		3.0×10^{1}	8.1×10^{2}	3.0×10^{1}	8.1×10^{2}	4.1×10^{1}	1.1×10^{3}
Ta-182		9.0×10^{-1}	2.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	2.3×10^{2}	6.2×10^{3}
Tb-157	Terbium (65)	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	5.6×10^{-1}	1.5×10^{1}
Tb-158		1.0	2.7×10^{1}	1.0	2.7×10^{1}	5.6×10^{-1}	1.5×10^{1}
Tb-160		1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	4.2×10^{2}	1.1×10^{4}
Tc-95m (a)	Technetium (43)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	8.3×10^{2}	2.2×10^{4}
Tc-96		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.2×10^{4}	3.2×10^{5}
Tc-96m (a)		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.4×10^{6}	3.8×10^{7}
Tc-97		Unlimited	Unlimited	Unlimited	Unlimited	5.2×10^{-5}	1.4×10^{-3}
Tc-97m		4.0×10^{1}	1.1×10^{3}	1.0	2.7×10^{1}	5.6×10^{2}	1.5×10^{4}
Tc-98		8.0×10^{-1}	2.2×10^{1}	7.0×10^{-1}	1.9×10^{1}	3.2×10^{-5}	8.7×10^{-4}
Tc-99		4.0×10^{1}	1.1×10^{3}	9.0×10^{-1}	2.4×10^{1}	6.3×10^{-4}	1.7×10^{-2}
Tc-99m		1.0×10^{1}	2.7×10^{2}	4.0	1.1×10^{2}	1.9×10^{5}	5.3×10^{6}
Te-121	Tellurium (52)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	2.4×10^{3}	6.4×10^{4}
Te-121m		5.0	1.4×10^{2}	3.0	8.1×10^{1}	2.6×10^{2}	7.0×10^{3}
Te-123m		8.0	2.2×10^{2}	1.0	2.7×10^{1}	3.3×10^{2}	8.9×10^{3}
Te-125m		2.0×10^{1}	5.4×10^{2}	9.0×10^{-1}	2.4×10^{1}	6.7×10^{2}	1.8×10^{4}
Te-127		2.0×10^{1}	5.4×10^{2}	7.0×10^{-1}	1.9×10^{1}	9.8×10^{4}	2.6×10^{6}
Te-127m		2.0×10^{1}	5.4×10^{2}	5.0×10^{-1}	1.4×10^{1}	3.5×10^{2}	9.4×10^{3}
Te-129		7.0×10^{-1}	1.9×10^{1}	6.0×10^{-1}	1.6×10^{1}	7.7×10^{5}	2.1×10^{7}
Te-129m (a)		8.0×10^{-1}	2.2×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.1×10^{3}	3.0×10^{4}
Te-131m (a)		7.0×10^{-1}	1.9×10^{1}	5.0×10^{-1}	1.4×10^{1}	3.0×10^{4}	8.0×10^{5}
Te-132 (a)		5.0×10^{-1}	1.4×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.1×10^{4}	8.0×10^{5}
Th-227	Thorium(90)	1.0×10^{1}	2.7×10^{2}	5.0×10^{-3}	1.4×10^{-1}	1.1×10^{3}	3.1×10^{4}

A 1 AND A 2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Th-228 (a)		5.0×10^{-1}	1.4×10^{1}	1.0×10^{-3}	2.7×10^{-2}	3.0×10^{1}	8.2×10^{2}
Th-229		5.0	1.4×10^{2}	5.0×10^{-4}	1.4×10^{-2}	7.9×10^{-3}	2.1×10^{-1}
Th-230		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	7.6×10^{-4}	2.1×10^{-2}
Th-231	Thorium(90)	4.0×10^{1}	1.1×10^{3}	2.0×10^{-2}	5.4×10^{-1}	2.0×10^{4}	5.3×10^{5}
Th-232		Unlimited	Unlimited	Unlimited	Unlimited	4.0×10^{-9}	1.1×10^{-7}
Th-234(a)		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	8.6×10^{2}	2.3×10^{4}
Th(nat)		Unlimited	Unlimited	Unlimited	Unlimited	8.1×10^{-9}	2.2×10^{-7}
Ti-44(a)	Titanium(22)	5.0×10^{-1}	1.4×10^{1}	4.0×10^{-1}	1.1×10^{1}	6.4	1.7×10^{2}
Tl-200	Thallium(81)	9.0×10^{-1}	2.4×10^{1}	9.0×10^{-1}	2.4×10^{1}	2.2×10^{4}	6.0×10^{5}
Tl-201		1.0×10^{1}	2.7×10^{2}	4.0	1.1×10^{2}	7.9×10^{3}	2.1×10^{5}
Tl-202		2.0	5.4×10^{1}	2.0	5.4×10^{1}	2.0×10^{3}	5.3×10^{4}
Tl-204		1.0×10^{1}	2.7×10^{2}	7.0×10^{-1}	1.9×10^{1}	1.7×10^{1}	4.6×10^{2}
Tm-167	Thulium(69)	7.0	1.9×10^{2}	8.0×10^{-1}	2.2×10^{1}	3.1×10^{3}	8.5×10^{4}
Tm-170		3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.2×10^{2}	6.0×10^{3}
Tm-171		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}
U-230 (fast lung absorption)(a)(d).	Uranium(92)	4.0×10^{1}	1.1×10^{3}	1.0×10^{-1}	2.7	1.0×10^{3}	2.7×10^{4}
U-230 (medium lung absorption) (a)(e).		4.0×10^{1}	1.1×10^{3}	1.0×10^{-1}	2.7	1.0×10^{3}	2.7×10^{4}
U-230 (slow lung absorption) (a)(f).		4.0×10^{1}	1.1×10^{3}	1.0×10^{-1}	2.7	1.0×10^{3}	2.7×10^{4}
U-232 (fast lung absorption) (d).		4.0×10^{1}	1.1×10^{3}	1.0×10^{-2}	2.7×10^{-1}	8.3×10^{-1}	2.2×10^{1}
U-232 (medium lung absorption) (e).		4.0×10^{1}	1.1×10^{3}	1.0×10^{-2}	2.7×10^{-1}	8.3×10^{-1}	2.2×10^{1}
U-232 (slow lung absorption) (f).		4.0×10^{1}	1.1×10^{3}	1.0×10^{-2}	2.7×10^{-1}	8.3×10^{-1}	2.2×10^{1}
U-233 (fast lung absorption) (d).	Uranium (92)	4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	3.6×10^{-4}	9.7×10^{-3}
U-233 (medium lung absorption) (e).		4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	3.6×10^{-4}	9.7×10^{-3}
U-233 (slow lung absorption) (f).		4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	3.6×10^{-4}	9.7×10^{-3}
U-234 (fast lung absorption) (d).		4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	2.3×10^{-4}	6.2×10^{-3}
U-234 (medium lung absorption) (e).		4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	2.3×10^{-4}	6.2×10^{-3}
U-234 (slow lung absorption) (f).		4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	2.3×10^{-4}	6.2×10^{-3}
U-235 (all lung absorption types) (a), (d), (e), (f).		Unlimited	Unlimited	Unlimited	Unlimited	8.0×10^{-8}	2.2×10^{-6}

A$_1$ AND A$_2$ VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
U-236 (fast lung absorption) (d).	.....	Unlimited	Unlimited	Unlimited	Unlimited	2.4×10^{-6}	6.5×10^{-5}
U-236 (medium lung absorption) (e).	.....	Unlimited	Unlimited	Unlimited	Unlimited	2.4×10^{-6}	6.5×10^{-5}
U-236 (slow lung absorption) (f).	.....	Unlimited	Unlimited	Unlimited	Unlimited	2.4×10^{-6}	6.5×10^{-5}
U-238 (all lung absorption types) (d), (e), (f).	.....	Unlimited	Unlimited	Unlimited	Unlimited	1.2×10^{-8}	3.4×10^{-7}
U (nat)	.....	Unlimited	Unlimited	Unlimited	Unlimited	2.6×10^{-8}	7.1×10^{-7}
U (enriched to 20% or less) (g).	.....	Unlimited	Unlimited	Unlimited	Unlimited	§173.434	§173.434
U (dep)	.....	Unlimited	Unlimited	Unlimited	Unlimited	§173.434	§173.434
V-48	Vanadium (23)	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	6.3×10^{3}	1.7×10^{5}
V-49	.....	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	3.0×10^{2}	8.1×10^{3}
W-178 (a)	Tungsten (74)	9.0	2.4×10^{2}	5.0	1.4×10^{2}	1.3×10^{3}	3.4×10^{4}
W-181	.....	3.0×10^{1}	8.1×10^{2}	3.0×10^{1}	8.1×10^{2}	2.2×10^{2}	6.0×10^{3}
W-185	.....	4.0×10^{1}	1.1×10^{3}	8.0×10^{-1}	2.2×10^{1}	3.5×10^{2}	9.4×10^{3}
W-187	.....	2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.6×10^{4}	7.0×10^{5}
W-188 (a)	.....	4.0×10^{-1}	1.1×10^{1}	3.0×10^{-1}	8.1	3.7×10^{2}	1.0×10^{4}
Xe-122	Xenon (54)	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	4.8×10^{4}	1.3×10^{6}
Xe-123	.....	2.0	5.4×10^{1}	7.0×10^{-1}	1.9×10^{1}	4.4×10^{5}	1.2×10^{7}
Xe-127	.....	4.0	1.1×10^{2}	2.0	5.4×10^{1}	1.0×10^{3}	2.8×10^{4}
Xe-131m	.....	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	3.1×10^{3}	8.4×10^{4}
Xe-133	.....	2.0×10^{1}	5.4×10^{2}	1.0×10^{1}	2.7×10^{2}	6.9×10^{3}	1.9×10^{5}
Xe-135	.....	3.0	8.1×10^{1}	2.0	5.4×10^{1}	9.5×10^{4}	2.6×10^{6}
Y-87 (a)	Yttrium (39)	1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.7×10^{4}	4.5×10^{5}
Y-88	.....	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	5.2×10^{2}	1.4×10^{4}
Y-90	.....	3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	2.0×10^{4}	5.4×10^{5}
Y-91	.....	6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	9.1×10^{2}	2.5×10^{4}
Y-91m	.....	2.0	5.4×10^{1}	2.0	5.4×10^{1}	1.5×10^{6}	4.2×10^{7}
Y-92	.....	2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	3.6×10^{5}	9.6×10^{6}
Y-93	.....	3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.2×10^{5}	3.3×10^{6}
Yb-169	Ytterbium (79)	4.0	1.1×10^{2}	1.0	2.7×10^{1}	8.9×10^{2}	2.4×10^{4}
Yb-175	.....	3.0×10^{1}	8.1×10^{2}	9.0×10^{-1}	2.4×10^{1}	6.6×10^{3}	1.8×10^{5}
Zn-65	Zinc (30)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	3.0×10^{2}	8.2×10^{3}
Zn-69	.....	3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.8×10^{6}	4.9×10^{7}
Zn-69m (a)	.....	3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.2×10^{5}	3.3×10^{6}
Zr-88	Zirconium (40)	3.0	8.1×10^{1}	3.0	8.1×10^{1}	6.6×10^{2}	1.8×10^{4}

A 1 AND A 2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1(TBq)	A_1(Ci)	A_2(TBq)	A_2(Ci)	Specific activity	
						(TBq/g)	(Ci/g)
Zr-93		Unlimited	Unlimited	Unlimited	Unlimited	9.3×10^{-5}	2.5×10^{-3}
Zr-95 (a)		2.0	5.4×10^{1}	8.0×10^{-1}	2.2×10^{1}	7.9×10^{2}	2.1×10^{4}
Zr-97 (a)		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	7.1×10^{4}	1.9×10^{6}

(a) A_1 and/or A_2 values include contributions from daughter nuclides with half-lives less than 10 days
(b) [Reserved]
(c) The quantity may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.
(d) These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.
(e) These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and he×avalent compounds in both normal and accident conditions of transport.
(f) These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.
(g) These values apply to unirradiated uranium only.
(h) A_1 = 0.1 TBq (2.7 Ci) and A_2 = 0.001 TBq (0.027 Ci) for Cf-252 for domestic use.
(i) A_2 = 0.74 TBq (20 Ci) for Mo-99 for domestic use.

31. A new § 173.436 would be added to read as follows:

§ 173.436 Table of exempt material activity concentrations and exempt consignment activity limits for radionuclides.

The table of exempt activity concentrations and exempt consignment activity limits for radionuclides is as follows:

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ac-225 (a)	Actinium (89)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Ac-227 (a)		1.0×10^{-1}	2.7×10^{-12}	1.0×10^{3}	2.7×10^{-8}
Ac-228		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ag-105	Silver (47)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ag-108m (a),(b)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ag-110m (a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ag-111		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Al-26	Aluminum (13)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Am-241	Americium (95)	1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Am-242m (a),(b)		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Am-243 (a),(b)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Ar-37	Argon (18)	1.0×10^{6}	2.7×10^{-5}	1.0×10^{8}	2.7×10^{-3}
Ar-39		1.0×10^{7}	2.7×10^{-4}	1.0×10^{4}	2.7×10^{-7}
Ar-41		1.0×10^{2}	2.7×10^{-9}	1.0×10^{9}	2.7×10^{-2}
As-72	Arsenic (33)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
As-73		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
As-74		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
As-76		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
As-77		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
At-211 (a)	Astatine (85)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Au-193	Gold (79)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Au-194		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Au-195		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Au-198		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Au-199		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ba-131 (a)	Barium (56)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ba-133		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ba-133m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ba-140 (a),(b)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Be-7	Beryllium (4)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{-7}	2.7×10^{-4}
Be-10		1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Bi-205	Bismuth (83)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Bi-206		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Bi-207		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Bi-210		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Bi-210m (a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Bi-212 (a),(b)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Bk-247	Berkelium (97)	1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Bk-249 (a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Br-76	Bromine (35)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Br-77		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Br-82		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
C-11	Carbon (6)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
C-14		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Ca-41	Calcium (20)	1.0×10^{5}	2.7×10^{-6}	1.0×10^{7}	2.7×10^{-4}
Ca-45		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Ca-47 (a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Cd-109	Cadmium (48)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Cd-113m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Cd-115 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Cd-115m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Ce-139	Cerium (58)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ce-141		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ce-143		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ce-144 (a),(b)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Cf-248	Californium (98)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cf-249		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Cf-250		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cf-251		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Cf-252		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cf-253 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Cf-254		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Cl-36	Chlorine (17)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Cl-38		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Cm-240	Curium (96)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Cm-241		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Cm-242		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Cm-243		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Cm-244		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cm-245		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Cm-246		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Cm-247 (a)		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Cm-248		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Co-55	Cobalt (27)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Co-56		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Co-57		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Co-58		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Co-58m		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Co-60		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Cr-51	Chromium (24)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Cs-129	Cesium (55)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Cs-131		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Cs-132		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Cs-134		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cs-134m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Cs-135		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Cs-136		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Cs-137 (a), (b)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cu-64	Copper (29)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Cu-67		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Dy-159	Dysprosium (66)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Dy-165		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Dy-166 (a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Er-169	Erbium (68)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Er-171		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Eu-147	Europium (63)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Eu-148		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Eu-149		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Eu-150 (short-lived)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Eu-150 (long-lived)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Eu-152		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Eu-152 m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Eu-154		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Eu-155		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Eu-156		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
F – 18	Fluorine (9)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Fe-52 (a)	Iron (26)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Fe-55		1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Fe-59		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Fe-60 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Ga-67	Gallium (31)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ga-68		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Ga-72		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Gd-146 (a)	Gadolinium (64)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Gd-148		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Gd-153		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Gd-159		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Ge-68 (a)	Germanium (32)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Ge-71		1.0×10^{4}	2.7×10^{-7}	1.0×10^{8}	2.7×10^{-3}
Ge-77		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Hf-172 (a)	Hafnium (72)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Hf-175		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Hf-181		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Hf-182		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Hg-194 (a)	Mercury (80)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Hg-195m(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Hg-197		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Hg-197m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Hg-203		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Ho-166	Holmium (67)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Ho-166m		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
I-123	Iodine (53)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
I-124		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
I-125		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
I-126		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
I-129		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
I-131		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
I-132		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
I-133		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
I-134		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
I-135 (a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
In-111	Indium (49)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
In-113m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
In-114m (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
In-115m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ir-189 (a)	Iridium (77)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Ir-190		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ir-192		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Ir-194		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
K-40	Potassium (19)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
K-42		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
K-43		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Kr-81	Krypton (36)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Kr-85		1.0×10^{5}	2.7×10^{-6}	1.0×10^{4}	2.7×10^{-7}
Kr-85m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{10}	2.7×10^{-1}
Kr-87		1.0×10^{2}	2.7×10^{-9}	1.0×10^{9}	2.7×10^{-2}

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
La-137	Lanthanum (57)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
La-140		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Lu-172	Lutetium (71)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Lu-173		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Lu-174		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Lu-174m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Lu-177		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Mg-28 (a)	Magnesium (12)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Mn-52	Manganese (25)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Mn-53		1.0×10^{4}	2.7×10^{-7}	1.0×10^{9}	2.7×10^{-2}
Mn-54		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Mn-56		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Mo-93	Molybdenum (42)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{8}	2.7×10^{-3}
Mo-99 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
N-13	Nitrogen (7)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{9}	2.7×10^{-2}
Na-22	Sodium (11)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Na-24		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Nb-93m	Niobium (41)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Nb-94		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Nb-95		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Nb-97		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Nd-147	Neodymium (60)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Nd-149		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ni-59	Nickel (28)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{8}	2.7×10^{-3}
Ni-63		1.0×10^{5}	2.7×10^{-6}	1.0×10^{8}	2.7×10^{-3}
Ni-65		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Np-235	Neptunium (93)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Np-236 (short-lived)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Np-236 (long-lived)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Np-237 (b)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Np-239		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Os-185	Osmium (76)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Os-191		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Os-191m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Os-193		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Os-194 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
P-32	Phosphorus (15)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
P-33		1.0×10^{5}	2.7×10^{-6}	1.0×10^{8}	2.7×10^{-3}
Pa-230 (a)	Protactinium (91)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Pa-231		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Pa-233		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Pb-201	Lead (82)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Pb-202		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Pb-203		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Pb-205		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Pb-210 (a),(b)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Pb-212 (a),(b)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Pd-103 (a)	Palladium (46)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{8}	2.7×10^{-3}
Pd-107		1.0×10^{5}	2.7×10^{-6}	1.0×10^{8}	2.7×10^{-3}
Pd-109		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Pm-143	Promethium (61)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Pm-144		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Pm-145		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Pm-147		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Pm-148m (a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Pm-149		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Pm-151		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Po-210	Polonium (84)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Pr-142	Praseodymium (59)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Pr-143		1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Pt-188 (a)	Platinum (78)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Pt-191		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Pt-193		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Pt-193m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Pt-195m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Pt-197		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Pt-197m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Pu-236	Plutonium (94)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Pu-237		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Pu-238		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Pu-239		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Pu-240		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Pu-241 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Pu-242		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Pu-244 (a)		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Ra-223 (a)	Radium (88) (b)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6} (b)
Ra-224 (a),(b)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Ra-225 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Ra-226 (a),(b)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Ra-228 (a),		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Rb-81	Rubidium (37)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Rb-83 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Rb-84		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Rb-86		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Rb-87		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Rb(nat)		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Re-184	Rhenium (75)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Re-184m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Re-186		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Re-187		1.0×10^{6}	2.7×10^{-5}	1.0×10^{9}	2.7×10^{-2}
Re-188		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Re-189 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Re(nat)		1.0×10^{6}	2.7×10^{-5}	1.0×10^{9}	2.7×10^{-2}
Rh-99	Rhodium (45)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Rh-101		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Rh-102		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Rh-102m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Rh-103m		1.0×10^{4}	2.7×10^{-7}	1.0×10^{8}	2.7×10^{-3}
Rh-105		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Rn-222 (a),(b)	Radon (86)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{8}	2.7×10^{-3}
Ru-97	Ruthenium (44)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Ru-103 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ru-105		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ru-106 (a),(b)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
S35	Sulphur (16)	1.0×10^{5}	2.7×10^{-6}	1.0×10^{8}	2.7×10^{-3}
Sb-122	Antimony (51)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{4}	2.7×10^{-7}
Sb-124		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Sb-125		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sb-126		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Sc-44	Scandium (21)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Sc-46		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Sc-47		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sc-48		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Se-75	Selenium (34)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Se-79		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Si-31	Silicon (14)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Si-32		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Sm-145	Samarium (62)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Sm-147		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Sm-151		1.0×10^{4}	2.7×10^{-7}	1.0×10^{8}	2.7×10^{-3}
Sm-153		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sn-113	(a)Tin (50)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Sn-117m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sn-119m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Sn-121m (a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Sn-123		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Sn-125		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Sn-126 (a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Sr-82 (a)	Strontium (38)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Sr-85		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sr-85m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Sr-87m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sr-89		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Sr-90 (a),(b)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{4}	2.7×10^{-7}
Sr-91 (a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Sr-92 (a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
T(H-3)	Tritium (1)	1.0×10^{6}	2.7×10^{-5}	1.0×10^{9}	2.7×10^{-2}
Ta-178 (long-lived)	Tantalum (73)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ta-179		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Ta-182		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Tb-157	Terbium (65)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Tb-158		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tb-160		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tc-95m (a)	Technetium (43)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tc-96		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tc-96m (a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Tc-97		1.0×10^{3}	2.7×10^{-8}	1.0×10^{8}	2.7×10^{-3}
Tc-97m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Tc-98		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tc-99		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Tc-99m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Te-121	Tellurium (52)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Te-121m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Te-123m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Te-125m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Te-127		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Te-127m (a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Te-129		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Te-129m (a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Te-131m (a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Te-132 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Th-227	Thorium (90)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Th-228 (a),(b)		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Th-229 (b)		1.0	2.7×10^{11}	1.0×10^{3}	2.7×10^{-8}
Th-230		1.0	2.7×10^{11}	1.0×10^{4}	2.7×10^{-7}
Th-231		1.0×10^{3}	2.7×10^{8}	1.0×10^{7}	2.7×10^{-4}
Th-232		1.0×10^{1}	2.7×10^{10}	1.0×10^{-4}	2.7×10^{-7}
Th-234 (a),(b)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Th (nat) (b)		1.0	2.7×10^{11}	1.0×10^{-3}	2.7×10^{-8}
Ti-44 (a)	Titanium (22)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Tl-200	Thallium (81)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tl-201		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Tl-202		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Tl-204		1.0×10^{4}	2.7×10^{7}	1.0×10^{-4}	2.7×10^{-7}
Tm-167	Thulium (69)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Tm-170		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Tm-171		1.0×10^{4}	2.7×10^{-7}	1.0×10^{8}	2.7×10^{-3}
U–230 (fast lung absorption) (a),(b),(d)	Uranium (92)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
U–230 (medium lung absorption) (a),(e).		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
U–230 (slow lung absorption) (a),(f)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
U-232 (fast lung absorption) (b),(d)	Uranium (92)	1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
U-232 (medium lung absorption) (e)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
U-232 (slow lung absorption) (f)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
U-233 (fast lung absorption) (d)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-233 (medium lung absorption) (e)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-233 (slow lung absorption) (f)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-234 (fast lung absorption) (d)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-234 (medium lung absorption) (e)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-234 (slow lung absorption) (f)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-235 (all lung absorption types) (a),(b),(d),(e),(f).		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-236 (fast lung absorption) (d)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-236 (medium lung absorption) (e)	Uranium (92)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-236 (slow lung absorption) (f)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-238 (all lung absorption types) (b),(d),(e),(f).		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U (nat) (b)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
U (enriched to 20% or less)(g)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
U (dep)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
V-48	Vanadium (23)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
V-49		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
W-178 (a)	Tungsten (74)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
W-181		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
W-185		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
W-187		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}

EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
W-188 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Xe-122 (a)	Xenon (54)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{9}	2.7×10^{-2}
Xe-123		1.0×10^{2}	2.7×10^{-9}	1.0×10^{9}	2.7×10^{-2}
Xe-127		1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Xe-131m		1.0×10^{4}	2.7×10^{-7}	1.0×10^{4}	2.7×10^{-7}
Xe-133		1.0×10^{3}	2.7×10^{-8}	1.0×10^{4}	2.7×10^{-7}
Xe-135		1.0×10^{3}	2.7×10^{-8}	1.0×10^{10}	2.7×10^{-1}
Y-87 (a)	Yttrium (39)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Y-88		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Y-90		1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Y-91		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Y-91m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Y-92		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Y-93		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Yb-169	Ytterbium (79)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Yb-175		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Zn-65	Zinc (30)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Zn-69		1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Zn-69m (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Zr-88	Zirconium (40)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Zr-93 (b)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Zr-95 (a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Zr-97 (a),(b)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}

Notes:
(a) A_1 and/or A_2 values include contributions from daughter nuclides with half-lives less than 10 days
(b) Parent nuclides and their progeny included in secular equilibrium are listed in the following:
Sr-90 Y-90
Zr-93 Nb-93m
Zr-97 Nb-97
Ru-106 Rh-106
Cs-137 Ba-137m
Ce-134 La-134
Ce-144 Pr-144
Ba-140 La-140
Bi-212 Tl-208 (0.36), Po-212 (0.64)
Pb-210 Bi-210, Po-210
Pb-212 Bi-212, Tl-208 (0.36), Po-212 (0.64)
Rn-220 Po-216
Rn-222 Po-218, Pb-214, Bi-214, Po-214
Ra-223 Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224 Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Ra-226 Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Ra-228 Ac-228
Th-226 Ra-222, Rn-218, Po-214
Th-228 Ra-224, Rn-220, Po-216, Pb212, Bi-212, Tl208 (0.36), Po-212 (0.64)
Th-229 Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-209
Th-nat Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-234 Pa-234m
U-230 Th-226, Ra-222, Rn-218, Po-214

U-232 Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
U-235 Th-231
U-238 Th-234, Pa-234m
U-nat Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214
U-240 Np-240m
Np-237 Pa-233
Am-242m Am-242
Am-243 Np-239
(c) [Reserved]
(d) These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.
(e) These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and he×avalent compounds in both normal and accident conditions of transport.
(f)These values apply to all compounds of uranium other than those specified in notes (d) and (e) of this table.
(g) These values apply to unirradiated uranium only.

32. In § 173.441, the section title would be revised, paragraph (d) would be redesignated as paragraph (e) and revised and a new paragraph (d) would be added to read as follows:

§ 173.441 Radiation level limitations and exclusive use provisions.

* * * * *

(d) Conveyance limits on the sum of package transport indexes are as follows:

(1) Except for shipments by cargo aircraft only or by seagoing vessel, the sum of transport indexes for a non-exclusive use shipment may not exceed 50.

(2) Where a consignment is transported under exclusive use, there is no limit on the sum of the transport indexes aboard a single conveyance.

(3) The number of packages, overpacks and freight containers containing Class 7 (radioactive) material being transported under exclusive use or stored in transit in any one storage area must be so limited that the total sum of the transport indexes in any group of packages, overpacks or freight containers does not exceed 50. Groups of packages must be situated so as to maintain a spacing of at least 6 m (20 ft) between the closest surfaces of packages, overpacks or freight containers from any two groups.

(4) Provisions for shipments of Class 7 (radioactive) materials by air are described in §§ 175.700–175.705 of this subchapter.

(5) Provisions for shipment of Class 7 (radioactive) materials by vessel are described in §§ 176.700–176.720 of this subchapter.

(e) Packages exceeding the maximum surface radiation level or maximum transport index prescribed in paragraph (a) of this section may not be transported by aircraft.

33. In § 173.443, paragraphs (a)(1) and (a)(2) would be revised to read as follows:

§ 173.443 Contamination control.

(a) * * *

(1) Wiping an area of 300 cm^2 of the surface concerned with an absorbent material, using moderate pressure, and measuring the activity on the wiping material. Sufficient measurements must be taken in the most appropriate locations to yield a representative assessment of the non-fixed contamination levels. The amount of radioactivity measured on any single wiping material, divided by the surface area wiped and divided by the efficiency of the wipe procedure, may not exceed the limits set forth in Table 11 at any time during transport. For this purpose the actual wipe efficiency may be used, or the wipe efficiency may be assumed to be 0.10; or

(2) Alternatively, the level of non-fixed radioactive contamination may be determined by using other methods of equal or greater efficiency. Table 11 is as follows:

TABLE 11.—NON-FIXED EXTERNAL RADIOACTIVE CONTAMINATION LIMITS FOR PACKAGES

Contaminant	Maximum permissible limits		
	Bq/cm^2	uCi/cm^2	dpm/cm^2
1. Beta and gamma emitters and low toxicity alpha emitters	4	10^{-4}	220
2. All other alpha emitting radionuclides	0.4	10^{-5}	22

* * * * *

34. Section 173.448 would be revised to read as follows:

§ 173.448 General transportation requirements.

(a) Each shipment of Class 7 (radioactive) materials must be secured to prevent shifting during normal transportation conditions.

(b) Except as provided in §§ 174.81, 176.83, and 177.848 of this subchapter, or as otherwise required by the Competent Authority in the applicable certificate, a package or overpack of Class 7 (radioactive) materials may be carried among packaged general cargo without special stowage provisions, if—

(1) The heat output in watts does not exceed 0.1 times the minimum package dimension in centimeters; or

(2) The average surface heat flux of the package or overpack does not exceed 15 watts per square meter and the immediately surrounding cargo is not in sacks or bags or otherwise in a form that would seriously impede air circulation for heat removal.

(c) Packages or overpacks bearing labels prescribed in § 172.403 of this subchapter may not be carried in compartments occupied by passengers, except in those compartments exclusively reserved for couriers accompanying those packages.

(d) Mixing of different kinds of packages that include fissile packages is authorized only in accordance with § 173.459.

(e) No person shall offer for transportation or transport aboard a passenger-carrying aircraft any single package or overpack with a transport index greater than 3.0.

(f) No person shall offer for transportation or transport aboard a passenger-carrying aircraft any Class 7 (radioactive) material unless that material is intended for use in, or incident to, research, medical diagnosis or treatment.

(g) If an overpack is used to consolidate individual packages or to enclose a single package of Class 7 (radioactive) materials, the package(s) must comply with the packaging,

marking, and labeling requirements of this subchapter, and:

(1) The overpack must be labeled as prescribed in § 172.403(h) of this subchapter;

(2) The overpack must be marked as prescribed in subpart D of part 172 of this subchapter and § 173.25(a); and

(3) The transport index of the overpack may not exceed 3.0 for passenger-carrying aircraft shipments, or 10.0 for cargo-aircraft shipments.

35. Section 173.453 would be revised to read as follows:

§ 173.453 Fissile materials-exceptions.

The requirements of §§ 173.457 and 173.459 do not apply to packages containing fissile material for which:

(a) The mass ratio of iron to fissile material is greater than 200:1 and the package contents contain less than 15 g of fissile material.

(b) The mass ratio of noncombustible, insoluble-in-water, material (including both the contents and packaging) to fissile material is greater than 2000:1 and the package contents contain less than 350 g of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package, but must not be included in determining the mass ratio for the package.

(c) Uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium present in the package is less than 0.1 percent of the fissile mass.

(d) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by weight, provided that:

(1) The total plutonium and uranium-233 content does not exceed 0.1 percent of the mass of uranium-235;

(2) The nitrogen to uranium atomic ratio (N/U) is greater than or equal to 2.0; and

(3) The material must be packaged in a DOT Type A package or other specification packaging authorized for radioactive material.

(e) Plutonium with a total mass of less than 1 kg, provided that: plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 20 percent by mass of the total quantity of plutonium in the package.

36. Section 173.457 would be revised to read as follows:

§ 173.457 Transportation of fissile material packages—specific requirements.

(a) Packages containing fissile radioactive material which are not excepted under § 173.453 must be assigned by the offeror, in accordance with their definitions in § 173.403, a criticality safety index (CSI) and a transport index (TI).

(b) Fissile material packages and conveyances transporting fissile material packages must satisfy the radiation level restrictions of § 173.441.

(c) Except for consignments under exclusive use, the CSI of any package or overpack may not exceed 50. A fissile material package with CSI greater than 50 must be transported by exclusive use.

(d) For non-exclusive use shipments of fissile material packages, except on vessels, the total sum of CSI's in a freight container or on a conveyance may not exceed 50.

(e) For exclusive use shipments of fissile material packages, except on vessels, the total sum of CSI's in a freight container or on a conveyance may not exceed 100.

(f) Exclusive use shipments of fissile material packages must satisfy the radiation level and administrative requirements of § 173.441(b).

(g) The number of packages, overpacks and freight containers containing fissile material stored in transit in any one storage area must be so limited that the total sum of the CSI's in any group of packages, overpacks or freight containers does not exceed 50. Groups of packages shall be stored so as to maintain a spacing of a least 6 m (20 ft) between the closest surfaces of any two groups.

(h) Provisions for shipment by vessel of Class 7 (radioactive) material packages, including fissile material packages by vessel are described in §§ 176.700—176.720 of this subchapter.

37. Section 173.459 would be revised to read as follows:

§ 173.459 Mixing of fissile material packages with non-fissile or fissile-excepted material packages.

Mixing of fissile material packages with other types of Class 7 (radioactive) materials in any conveyance or storage location is authorized only if the TI of any single package does not exceed 10, the CSI of any single package does not exceed 50, and the provisions of §§ 173.441 and 173.457 are satisfied.

38. In § 173.469, paragraphs (a)(4)(ii), (c)(1)(i), (c)(1)(iv), (c)(2)(i), (c)(2)(iv), and (d)(1) would be revised to read as follows:

§ 173.469 Tests for special form Class 7 (radioactive) materials.

(a) * * *

(4) * * *

(ii) A specimen that comprises or simulates Class 7 (radioactive) material contained in a sealed capsule need not be subjected to the leaching assessment specified in paragraph (c) of this section provided it is alternatively subjected to any of the volumetric leakage assessment tests prescribed in the International Organization for Standardization document ISO 9978–1992(E): ''Radiation Protection—Sealed Radioactive Sources—Leakage Test Methods'' (see § 171.7 of this subchapter).

* * * * *

(c) * * *

(1) * * *

(i) The specimen shall be immersed for seven days in water at ambient temperature. The volume of water to be used in the test shall be sufficient to ensure that at the end of the seven day test period the free volume of the unabsorbed and unreacted water remaining shall be at least 10% of the volume of the solid test sample itself. The water shall have an initial pH of 6–8 and a maximum conductivity of 1 mS/m (10 micromho/cm) at 20°C (68°F).

* * * * *

(iv) The specimen shall then be kept for at least seven days in still air at not less than 30°C (86°F) and relative humidity not less than 90%.

* * * * *

(2) * * *

(i) The specimen shall be immersed in water at ambient temperature. The water shall have an initial pH of 6–8 and a maximum conductivity of 1 mS/m (10 micromho/cm) at 20°C (68°F).

* * * * *

(iv) The specimen shall then be kept for at least seven days in still air at not less than 30°C (86°F) and relative humidity not less than 90%.

* * * * *

(d) * * *

(1) The impact test and the percussion test of this section provided that the mass of the special form radioactive material is less than 200 g and it is alternatively subjected to the Class 4 impact test prescribed in ISO 2919, ''Sealed Radioactive Sources—Classification'' (see § 171.7 of this subchapter); and

* * * * *

39. In § 173.471, the introductory text would be revised to read as follows:

§ 173.471 Requirements for U.S. Nuclear Regulatory Commission approved packages.

In addition to the applicable requirements of the U.S. Nuclear Regulatory Commission (USNRC) and other requirements of this subchapter, any offeror of a Type B(U), Type B(M), or Type B(DP) or other fissile material

package that has been approved by the USNRC in accordance with 10 CFR part 71 must also comply with the following requirements:

* * * * *

40. In § 173.473, the introductory text would be revised to read as follows:

§ 173.473 Requirements for foreign-made packages.

In addition to other applicable requirements of this subchapter, each offeror of a foreign-made Type B(U), Type B(M), Type C, Type CF, Type H(U), Type H(M), or fissile material package for which a Competent Authority Certificate is required by IAEA's ''Regulations for the Safe Transport of Radioactive Material, No. TS–R–1, '' (see § 171.7 of this subchapter) shall also comply with the following requirements:

* * * * *

41. In § 173.476, ''; and'' at the end of paragraph (c)(3) would be removed and a semi-colon would be added in its place, paragraph (c)(4) would be revised and a new paragraph (c)(5) would be added to read as follows:

§ 173.476 Approval of special form Class 7 (radioactive) materials.

* * * * *

(c) * * *

(4) For the original request for a Competent Authority Certificate, evidence of a quality assurance program based on international, national or other standards, for the design, manufacture, testing, documentation, use, maintenance and inspection, as appropriate, of all special form material transported by the requester; and

(5) A description of any proposed pre-shipment actions, such as leak testing, for use in the consignment of special form radioactive material for transport.

* * * * *

42. A new § 173.477 would be added to read as follows:

§ 173.477 Approval of packagings containing greater than 0.1 kg of non-fissile or fissile-excepted uranium hexafluoride.

(a) Each offeror of a package containing more than 0.1 kg of uranium hexafluoride must maintain on file for at least one year after the latest shipment, and provide to the Associate Administrator on request, a complete safety analysis, including documentation of any tests, demonstrating that the package meets the requirements of § 173.420. An IAEA Certificate of Competent Authority issued for the design of the packaging containing greater than 0.1 kg of non-fissile or fissile-excepted uranium hexafluoride may be used to satisfy this requirement.

(b) Prior to the first export shipment of a package containing greater than 0.1 kg of uranium hexafluoride from the United States, each offeror shall obtain a U.S. Competent Authority Certificate for the packaging design. For packagings manufactured outside the United States, each offeror shall comply with § 173.473.

(c) Each request for a U.S. Competent Authority Certificate as required by the IAEA regulations must be submitted in writing, in triplicate, to the Associate Administrator. Each request is considered in the order in which it is received. To allow sufficient time for consideration, requests must be received at least 90 days before the requested effective date. Each request for a U.S. Competent Authority Certificate must include the following information:

(1) A safety analysis report which, at a minimum, provides a detailed description of the packaging and contents; a description of the manufacturing process used for the packaging; and details of the tests conducted and copy of their results, evidence based on calculative methods to show that the package is able to pass the tests, or other evidence that the package complies with § 173.420; and

(2) For the original request for a Competent Authority Certificate, evidence of a quality assurance program.

PART 174—CARRIAGE BY RAIL

43. The authority citation for part 174 would continue to read as follows:

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

44. In § 174.700, paragraph (b) would be revised, paragraphs (d) through (f) would be redesignated as paragraphs (e) through (g), respectively, and a new paragraph (d) would be added to read as follows:

§ 174.700 Special handling requirements for Class 7 (radioactive) materials.

* * * * *

(b) The number of packages of Class 7 (radioactive) materials that may be transported by rail car or stored at any single location is limited to a total transport index and a total criticality safety index (as defined in § 173.403 of this subchapter) of not more than 50 each. This provision does not apply to exclusive use shipments as described in §§ 173.403, 173.427, 173.441, and 173.457 of this subchapter.

* * * * *

(d) Each shipment of fissile material packages must conform to requirements of §§ 173.457 and 173.459.

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

45. The authority citation for part 175 would continue to read as follows:

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

46. In § 175.700, paragraph (a) would be revised and a new paragraph (e) would be added to read as follows:

§ 175.700 Special limitations and requirements for Class 7 (radioactive) materials.

(a) In addition to other requirements, no person may carry in a passenger-carrying aircraft any package required to be labeled in accordance with § 172.403 of this subchapter with a RADIOACTIVE YELLOW-II, RADIOACTIVE YELLOW-III or FISSILE label unless:

(1) For a package required to be labeled RADIOACTIVE YELLOW-III, the transport index does not exceed 3.0;

(2) For a package required to carry a FISSILE label, the criticality safety index does not exceed 3.0;

(3) The package is carried on the floor of the cargo compartment, or freight container;

(4) The package is carried in the aircraft in accordance with §§ 175.701 and 175.703;

(5) The total sum of transport indexes of all packages in the aircraft does not exceed 50; and

(6) The total sum of criticality safety indexes of all packages in the aircraft does not exceed 50.

* * * * *

(e) Any package or overpack having either a transport index greater than 10, or any consignment having a criticality safety index greater than 50, must be transported only under exclusive use.

47. In § 175.702, the section heading would be revised, and paragraph (b) would be revised to read as follows:

§ 175.702 Requirements for carriage of packages containing Class 7 (radioactive) materials in a non-exclusive use cargo aircraft only.

* * * * *

(b) No person may carry in a non-exclusive use cargo aircraft only any package required by § 172.403 of this subchapter to be labeled RADIOACTIVE YELLOW-II or RADIOACTIVE YELLOW-III or FISSILE unless:

(1) The total transport index for all of the packages does not exceed 50.0, the total criticality safety index for all of the packages does not exceed 50.0, and the

package is carried in accordance with § 175.701(a); or

(2) The total transport index for all of the packages is greater than 50.0 but does not exceed 200.0, the total criticality safety index for all of the packages does not exceed 50.0; and :

(i) The transport index for any group of packages does not exceed 50.0;

(ii) Each group of packages is separated from every other group in the aircraft by not less than 6 m (20 feet), measured from the outer surface of each group; and

(iii) The separation distance between the surfaces of the Class 7 (radioactive) materials packages, overpacks or freight containers and any space occupied by—

(A) Humans is at least 9 m (30 feet); and

(B) Live animals is at least 0.5 m (20 inches) for journeys not exceeding 24 hours and at least 1.0 m (39 inches) for journeys longer than 24 hours.

48. In § 175.703, paragraph (b) would be revised, paragraphs (c), (d), and (e) would be redesignated as paragraphs (d), (e), and (f) respectively, a new paragraph (c) would be added, and paragraphs (d) and (f) would be revised to read as follows:

§ 175.703 Other special requirements for the acceptance and carriage of packages containing Class 7 (radioactive) materials.

* * * * *

(b) No person may accept for carriage in an aircraft packages of Class 7 (radioactive) materials, other than limited quantities, contained in an overpack unless they have been prepared for shipment in accordance with § 173.448(g) of this subchapter.

(c) Each shipment of fissile material packages must conform to the requirements of §§ 173.457 and 173.459 of this subchapter.

(d) No person shall carry in an aircraft a fissile material package with a criticality safety index greater than 50, except—

(1) In a cargo aircraft only which has been assigned for the exclusive use of the shipper for the specific shipment of fissile Class 7 (radioactive) material. Instructions for the exclusive use must be developed by the shipper and carrier, and the instructions issued with the shipping papers.

(2) There is no upper limit to the total transport index which may be carried in an exclusive use aircraft; however, radioactive material must be segregated sufficiently from crew members such that crew members in regularly occupied work areas do not receive a dose in excess of 5.0 mSv (500 mrem) in a year.

(3) The total criticality safety index of all of the packages carried in an exclusive use aircraft shall not exceed 100.

* * * * *

(f) Packages with radiation levels at the package surface or a transport index in excess of the limits specified in § 173.441(a) of this subchapter may not be transported by aircraft except under special arrangements approved by the Associate Administrator.

PART 176—CARRIAGE BY VESSEL

49. The authority citation for part 176 would continue to read as follows:

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

§ 176.700 [Amended]

50. In § 176.700, paragraph (c) would be removed, and paragraphs (d) and (e) would be redesignated (c) and (d), respectively.

51. Section 176.704 would be revised to read as follows:

§ 176.704 Requirements relating to transport indexes and criticality safety indexes.

(a) The sum of the transport indexes (TI's) for all packages of Class 7 (radioactive) materials on board a vessel may not exceed the limits specified in Table IIIA of this section.

(b) For packages in freight containers, the radiation level may not exceed 2 mSv per hour (200 mrem per hour) at any point on the surface and 0.1 mSv per hour (10 mrem per hour) at 2 m (6.6 ft) from the outside surface of the freight container.

(c) The limitations specified in Table IIIA of this section do not apply to consignments of LSA-I material.

(d) The sum of the criticality safety indexes (CSI's) for all packages of Class 7 (radioactive) materials on board a vessel may not exceed the limits specified in Table IIIB of this section.

(e) Each group of Class 7 (radioactive) material packages, containing a sum of CSIs no greater than 50 for a non-exclusive use shipment, or no greater than 100 for an exclusive use shipment, must be separated from all other groups containing fissile material packages by a distance of at least 6 m (20 ft) at all times.

(f) The limitations specified in paragraphs (a) through (c) of this section do not apply when the entire vessel is reserved or chartered for use by a single offeror under exclusive use conditions if—

(1) The number of packages of fissile Class 7 (radioactive) material satisfies the individual package CSI limits of § 173.457 of this subchapter, except that the total sums of CSI's in the last column of Table IIIB of this section, including table note (d) apply;

(2) A radiation protection program for the shipment has been established and approved by the competent authority of the flag state of the vessel and, when requested, by the competent authority at each port of call;

(3) Stowage arrangements have been predetermined for the whole voyage, including any consignments to be loaded at ports of call;

(4) The loading, transport and unloading are to be supervised by persons qualified in the transport of radioactive material; and

(5) The entire shipment operation is approved by the Associate Administrator in advance.

(g) Table IIIA is as follows:

TABLE IIIA.—TI LIMITS FOR FREIGHT CONTAINERS AND CONVEYANCES

Type of freight container or conveyance	Limit on total sum of transport indexes in a single freight container or aboard a conveyance	
	Not under exclusive use	Under exclusive use
I. Freight container—small	50	N/A
II. Freight container—large	50	No limit
III. Vessel: [a, b]		
1. Hold, compartment or defined deck area:		
i. Packages, overpacks, small freight containers	50	No limit
ii. Large freight containers	200	No limit
2. Total vessel:		
i. Packages, overpacks, small freight containers	200	No limit

TABLE IIIA.—TI LIMITS FOR FREIGHT CONTAINERS AND CONVEYANCES—Continued

Type of freight container or conveyance	Limit on total sum of transport indexes in a single freight container or aboard a conveyance	
	Not under exclusive use	Under exclusive use
ii. Large freight containers	No limit	No limit

[a] For vessels, the requirements in both 1 and 2 must be fulfilled.
[b] Packages or overpacks transported in or on a vehicle which are offered for transport in accordance with the provisions of § 173.441(b) of this subchapter may be transported by vessels provided that they are not removed from the vehicle at any time while on board the vessel.

(h) Table IIIB is as follows:

TABLE IIIB.—CSI LIMITS FOR FREIGHT CONTAINERS AND CONVEYANCES

Type of freight container or conveyance	Limit on total sum of criticality safety indexes in a single freight container or aboard a conveyance	
	Not under exclusive use	Under exclusive use
I Freight container-small	50	N/A
II. Freight container-large	50	100
III. Vessel: [a, b]		
1. Hold, compartment or defined deck area:		
i. Packages, overpacks, small freight containers	50	100
ii. Large freight containers	50	100
2. Total vessel:		
i. Packages, overpacks, small freight containers	[c]200	[d]200
ii. Large freight containers	No limit [c]	No limit [d]

[a] For vessels, the requirements in both 1 and 2 must be fulfilled.
[b] Packages or overpacks transported in or on a vehicle which are offered for transport in accordance with the provisions of § 173.441(b) of this subchapter may be transported by vessels provided that they are not removed from the vehicle at any time while on board the vessel. In that case, the entries under the heading ''under exclusive use'' apply.
[c] The consignment must be handled and stowed such that the total sum of CSIs in any group does not exceed 50, and such that each group is handled and stowed so that the groups are separated from each other by at least 6 m (20 ft).
[d] The consignment must be handled and stowed such that the total sum of CSIs in any group does not exceed 100, and such that each group is handled and stowed so that the groups are separated from each other by at least 6 m (20 ft). The intervening space between groups may be occupied by other cargo.

52. In § 176.708 the section title and paragraphs (a) through (e) would be revised and in note 6 to Table IV in paragraph (f), ''176.704(f)'' would be revised to read ''176.704(g)'' to read as follows:

§ 176.708 Segregation distances.

(a) Table IV lists minimum separation distances between radioactive materials and spaces regularly occupied by crew members or passengers, or between radioactive materials and undeveloped photographic film. It expresses the separation distances as a function of the sum of the TIs of all packages in a single consignment, in the case of 0 or 3 feet of intervening cargo of unit density for persons, and 0, 3, or 6 feet of intervening cargo of unit density for undeveloped film. Cargo of unit density is stowed cargo with a density of 1 long ton (2240 lbs.) per 36 cubic feet. Separation distances may be interpolated from the table where appropriate.

(b) Table IV is to be used to determine the separation distance for undeveloped film.

(c) Category YELLOW–II or YELLOW–III packages or overpacks must not be transported in spaces occupied by passengers, except those exclusively reserved for couriers specially authorized to accompany such packages or over packs.

(d) The separation distances for crew members and passengers may be determined by one of two methods:

(1) By using Table IV to determine the minimum distances between the radioactive material packages and regularly occupied spaces or living quarters; or

(2) For one or more consignments of Class 7 (radioactive) material to be loaded on board a vessel under the exclusive use conditions described in § 176.704(f), by demonstration through direct measurement, made and documented by a suitably qualified person, that for the indicated exposure times the dose rate in regularly occupied spaces or living quarters is less than—

(i) For the crew: 7.0 μSv/h (0.70 mrem/h) up to 700 hours in a year, or 1.8 μSv/h (0.18 mrem/h) up to 2750 hours in a year; and

(ii) For the passengers: 1.8 μSv/h (0.18 mrem/h) up to 550 hours in a year, taking into account any relocation of cargo during the voyage.

(e) Any departure from the segregation provisions should be approved by the competent authority of the flag state of the ship and, when requested, by the competent authority at each port of call.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

53. The authority citation for part 177 would continue to read as follows:

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

54. In § 177.842, paragraph (g) would be revised to read as follows:

§ 177.842 Class 7 (radioactive) material.

* * * * *

(g) For shipments transported under exclusive use conditions the radiation dose rate may not exceed 0.02 mSv per hour (2 mrem per hour) in any position normally occupied in the motor vehicle. For shipments transported as exclusive use under the provisions of § 173.441(b) of this subchapter for packages with external radiation levels in excess of 2 mSv (200 mrem per hour) at the package surface, the motor vehicle must meet the requirements of a closed transport vehicle (see § 173.403 of this subchapter). The sum of criticality safety indexes (CSIs) for packages containing fissile material may not exceed 100.

PART 178—SPECIFICATIONS FOR PACKAGINGS

55. The authority citation for part 178 would continue to read as follows:

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

56. In § 178.350, paragraph (b) would be revised and paragraph (c) would be added to read as follows:

§ 178.350 Specification 7A; general packaging, Type A.

* * * * *

(b) Each Specification 7A packaging must be marked on the outside ''USA DOT 7A Type A.''

(c) Each Specification 7A packaging must be marked with the name of the manufacturer, or offeror, in association with marking required by paragraph (b) of this section.

§§ 178.352 and 178.352–1—178.352–6 [Removed]

57. Sections 178.352 and 178.352–1 through 178.352–6 would be removed.

§§ 178.354 and 178.354–1—178.354–5 [Removed]

58. Sections 178.354 and 178.354–1 through 178.354–5 would be removed.

§§ 178.362 and 178.362–1—178.362–7 [Removed]

59. Sections 178.362 and 178.362–1 through 178.362–7 would be removed.

§§ 178.364 and 178.364–1—178.364–6 [Removed]

60. Sections 178.364 and 178.364–1 through 178.364–6 would be removed.

Issued in Washington, DC on March 27, 2002 under authority delegated in 49 CFR part 106.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–8143 Filed 4–29–02; 8:45 am]

BILLING CODE 4910–60–P

Federal Register

Tuesday,
April 30, 2002

Part III

Nuclear Regulatory Commission

10 CFR Part 71

Compatibility With IAEA Transportation Safety Standards (TS–R–1) and Other Transportation Safety Amendments; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

RIN 3150–AG71

Compatibility With IAEA Transportation Safety Standards (TS–R–1) and Other Transportation Safety Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations on packaging and transporting radioactive material to make them compatible with the International Atomic Energy Agency (IAEA) standards and to codify other applicable requirements. These changes would be compatible with ST–1 (TS–R–1), the latest revision of the IAEA transportation standards. This rulemaking would also address the unintended economic impact of NRC's emergency final rule entitled ''Fissile Material Shipments and Exemptions'' (February 10, 1997; 62 FR 5907) and a petition for rulemaking submitted by International Energy Consultants, Inc. (PRM–71–12: February 19, 1998; 63 FR 8362).

DATES: The comment period closes July 29, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemaking and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also provide electronic comments via the NRC's interactive rulemaking website at *http://ruleforum.llnl.gov.* This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher at (301) 415–5905 (e-mail: CAG@nrc.gov).

Documents related to this action may be examined at the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD. Documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or email to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Naiem S. Tanious, Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555–0001, telephone: (301) 415–6103; e-mail; *nst@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Contents

I. Background
II. Summary of Public Comments
III. Request for Cost-Benefit and Exposure Information
IV. Discussion
A. TS–R–1 Compatibility Issues
Issue 1: Changing Part 71 to the International System of Units (SI) Only
Issue 2: Radionuclide Exemption Values
Issue 3: Revision of A_1 and A_2
Issue 4: Uranium Hexafluoride Package Requirements
Issue 5: Introduction of the Criticality Safety Index Requirements
Issue 6: Type C Packages and Low Dispersible Material
Issue 7: Deep Immersion Test
Issue 8: Grandfathering Previously Approved Packages
Issue 9: Changes to Various Definitions
Issue 10: Crush Test for Fissile Material Package Design
Issue 11: Fissile Material Package Design for Transport by Aircraft
B. NRC-Initiated Issues
Issue 12: Special Package Authorizations
Issue 13: Expansion of Part 71 Quality Assurance Requirements to Certificate of Compliance (CoC) Holders
Issue 14: Adoption of American Society of Mechanical Engineers (ASME) Code
Issue 15: Change Authority for Dual-Purpose Package Certificate Holders
Issue 16: Fissile Material Exemptions and General License Provisions
Issue 17: Double Containment of Plutonium (PRM–71–12)
Issue 18: Contamination Limits as Applied to Spent Fuel and High-Level Waste (HLW) Packages
Issue 19: Modifications of Event Reporting Requirements
V. Section-By-Section Analysis
VI. Criminal Penalties
VII. Issues of Compatibility for Agreement States
VIII. Plain Language
IX. Voluntary Consensus Standards
X. Environmental Assessment: Finding of No Significant Impact
XI. Paperwork Reduction Act Statement
XII. Regulatory Analysis
XIII.Regulatory Flexibility Act Certification
XIV. Backfit Analysis

I. Background

The Commission directed the NRC staff in Staff Requirements Memorandum (SRM) 00–0117 dated June 28, 2000: (1) To use an enhanced public-participation process (website and facilitated public meetings) to solicit public input on the part 71 rulemaking; and (2) to publish the staff's Part 71 issues paper in the **Federal Register** (65 FR 44360; July 17, 2000) for public comment. The issues paper presented the NRC's plan to revise Part 71 and provided a summary of all changes being considered, both IAEA-related changes and NRC-initiated changes. The NRC published the issues paper to begin an enhanced public-participation process designed to solicit public input on the part 71 rulemaking. This process included establishing an interactive website and holding three facilitated public meetings: a ''roundtable'' workshop at the NRC Headquarters, Rockville, MD, on August 10, 2000, and two ''townhall'' meetings—one in Atlanta, GA, on September 20, 2000, and a second in Oakland, CA, on September 26, 2000.

SRM–00–0117 also directed the staff to proceed, after completion of the public meetings, with the development of a proposed rule for submittal to the Commission by March 1, 2001. Oral and written comments received from the public meetings, by mail, and through the NRC website, in response to the issues paper, were considered in the drafting of the proposed changes contained herein.

Past NRC–IAEA Compatibility Revisions

Recognizing that its international regulations for the safe transportation of radioactive material should be revised from time to time to reflect knowledge gained in scientific and technical advances and accumulated experience, IAEA invited Member States (the U.S. is a Member State) to submit comments and suggest changes to the regulations in 1969. As a result of this initiative, the IAEA issued revised regulations in 1973 (Regulations for the Safe Transport of Radioactive Material, 1973 edition, Safety Series No. 6). The IAEA also decided to periodically review its transportation regulations, at intervals of about 10 years, to ensure that the regulations are kept current. In 1979, a review of IAEA's transportation regulations was initiated that resulted in the publication of revised regulations in 1985 (Regulations for the Safe Transport of Radioactive Material, 1985 edition, Safety Series No. 6).

The NRC also periodically revises its regulations for the safe transportation of

radioactive material to make them compatible with those of the IAEA. On August 5, 1983 (48 FR 35600), the NRC published in the **Federal Register** a final revision to part 71, ''Packaging and Transportation of Radioactive Material.'' That revision, in combination with a parallel revision of the hazardous materials transportation regulations of the U.S. Department of Transportation (DOT), brought U.S. domestic transport regulations into general accord with the 1973 edition of IAEA transport regulations. The last revision to Part 71 was published on September 28, 1995 (60 FR 50248), to make part 71 compatible with the 1985 IAEA Safety Series No. 6. The DOT published its corresponding revision to Title 49 on the same date (60 FR 50291).

The last revision to the IAEA Safety Series 6 was named Safety Standards Series ST–1, published in December 1996, and was revised with minor editorial changes in June 2000, and was redesignated as TS–R–1. This rulemaking effort is to evaluate TS–R–1 for potential adoption in Part 71 regulations.

Historically, the NRC coordinated its Part 71 revisions with DOT, because DOT is the U.S. Competent Authority for transportation of hazardous materials. ''Radioactive Materials'' is a subset of ''Hazardous Materials'' in Title 49 regulations under DOT authority. Currently, DOT and NRC co-regulate transport of nuclear material in the United States. NRC is continuing with its coordinating effort with the DOT in this rulemaking process. Refer to the DOT's corresponding rule for additional background on the positions proposed in this notice.

Scope of 10 CFR Part 71 Rulemaking

As directed by the Commission, NRC staff compared TS–R–1 to the previous version of Safety Series No. 6 to identify changes made in TS–R–1, and then identified affected sections of Part 71. Based on this comparison, NRC staff identified 11 areas in part 71 that needed to be addressed in this rulemaking process as a result of the changes to the IAEA regulations. The staff grouped the part 71 IAEA compatibility changes into the following issues: (1) Changing part 71 to the International System of Units (Sl) (also known as the metric system) exclusively; (2) Radionuclide specific exemption values; (3) Revision of A_1 and A_2 values; (4) Uranium hexafluoride (UF_6) package requirements; (5) Introduction of criticality safety index requirements; (6) Type C packages and low dispersible material; (7) Deep immersion test; (8) Grandfathering previously approved packages; (9) Adding and modifying Part 71 definitions; (10) Crush test for fissile material package design; and (11) Fissile material package design for transport by aircraft.

Eight additional NRC-initiated issues (numbers 12 through 19) were identified by Commission direction, and through staff consideration, for incorporation in the Part 71 rulemaking process. These NRC-initiated changes are: (12) Special package approvals; (13) Expansion of Part 71 quality assurance (QA) requirements to holders of, and applicants for, a Certificate of Compliance (CoC); (14) Adoption of the requirements of American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel (B&PV) Code for fabrication of spent fuel transportation packages; (15) Adoption of change authority; (16) Revisions to the fissile-exempt and general license provisions to address the unintended economic impact of the emergency rule (SRM–SECY–99–200); (17) Decision on Petition for Rulemaking PRM–71–12, which requested deletion of the double containment requirements for plutonium; (18) Surface contamination limits as applied to spent fuel and high-level waste packages (SRM–SECY–00–0117); and (19) Part 71 event reporting requirements. NRC published the first 18 issues in an issues paper in the **Federal Register** on July 17, 2000 (65 FR 44360).

The Part 71 rulemaking is being coordinated with DOT to ensure that consistent regulatory standards are maintained between NRC and DOT radioactive material transportation regulations, and to ensure coordinated publication of the final rules by both agencies. On December 28, 1999 (64 FR 72633), DOT published an advance notice of proposed rulemaking regarding adoption of TS–R–1 in its regulations.

II. Summary of Public Comments

The NRC held three public meetings to discuss and hear public comments on the issues under consideration for this rule. These meetings were transcribed by a court reporter; the meeting transcripts and condensed summaries of the comments made in the meeting are available to the public on the NRC's interactive rulemaking website at *http://ruleforum.llnl.gov* and the Public Document Room located at One White Flint North, 11555 Rockville Pike, Room O–1F23, Rockville, MD. Also, the NRC received a total of 48 written comments on the issues paper during the meetings, by mail, and through the website. All of these written comments have been placed on the NRC website. The Commission has prepared a comment summary document entitled: ''Summary and Categorization of Public Comments on the Major Revision of 10 CFR Part 71.'' This document is published as NUREG/CR–6712, March 2001.

This section provides a summary of general comments received at the public meetings that are not associated with any one issue, but rather with the NRC rulemaking process for this effort of the Part 71 revision. A summary of public comments associated with a specific issue is included later in the discussion section under that issue. Comments not specific to this rulemaking effort are not included, nor are they discussed for their relevancy to the scope of this proposed action.

August 10, 2000, Meeting

Two commenters supported moving towards risk-informed regulation because they believe it will increase the safety of nuclear power plants by allowing the operators to focus on risk-significant issues.

Ten commenters wanted assurance that any changes to the NRC's regulations, whether in the context of conformity with international regulations, or solely affecting domestic shipments of radioactive materials, will not result in a reduction in transportation safety for the public.

Two commenters suggested that NRC provide more information about the specific changes that will be incorporated into a proposed rule. One of these commenters also suggested that NRC consider increasing the number of public meetings and having them early on in the process in locations that will potentially be affected by any changes in the transportation regulations. The commenter also requested that the public comment period for this proposed rule be extended. This commenter also suggested that possibly by coordinating public meetings for all rulemakings or actions related to transportation (e.g., the Package Performance Study), the public will be better able to see the interrelation of the various NRC actions.

Two commenters voiced their concern about the public accessibility of documentation related to transportation regulations. Specifically, they were concerned about the legal implications (i.e., due process) of not providing access to documents such as: (1) TS–R–1, (2) draft Advisory Material for the Regulations for the Safe Transport of Radioactive Material (TS–G–1.1) (supporting document for TS–R–1), and (3) the ASME code, while requesting public input on potential changes to the regulations to enhance conformity with

international and domestic standards and regulations. One commenter noted that without these materials, the underlying basis of a proposed rule cannot be fully explored before its incorporation into the regulations.

Two commenters were seeking clarification on the scope of the proposed changes. The commenters asked whether NRC intends to adopt all of the changes from IAEA's Safety Series 6 regulations that have been incorporated into the current TS–R–1 regulations, or just those identified in the proposed rule. One commenter also sought clarification as to whether the combined regulatory changes anticipated by NRC and DOT would cover all of the changes present in IAEA's TS–R–1 regulations.

Three commenters expressed concern over the possibility that the proposed changes in the transportation regulations could result in materials (including certain bulk materials) that were previously not regulated by NRC suddenly coming under NRC's jurisdiction, or actually becoming exempt in other jurisdictions. One commenter noted that this increased regulation could result in unnecessary concern on the part of the public as to the nature of the materials being transported. One commenter asked specifically if NRC was intending to start regulating naturally-occurring radioactive materials (NORM) and requested clarification on NRC's statutory authority to do so.

One commenter suggested that, in addition to NRC and DOT, State agencies play an important role in the regulation of radioactive materials. The commenter noted that currently 32 States have entered into agreements with the NRC to become Agreement States. As Agreement States, they regulate use of radioactive material, and have regulations on transportation of radioactive material, including enforcement authority. The commenter is interested in being able to track possible changes in current regulations and how this could affect regulations at the State level.

Seven commenters were concerned about the harmonization of NRC's regulations with those of the IAEA. The commenters expressed concern over the value of harmonization compared to the costs of implementation, and they further questioned the magnitude of the safety benefits of such harmonization. One commenter questioned that if Member States were not adopting TS–R–1 uniformly, what impact could that have on licensee's ability to transport internationally. Two commenters noted that while the TS–R–1 standards are burdensome, NRC does not want to stop commerce, and that is a risk if NRC does not adopt or harmonize with the TS–R–1 standards.

Another commenter noted that the U.S. should have the right to adopt more stringent standards than those contained in TS–R–1. This commenter argued that uniform regulations should constitute a ''minimum'' set of requirements and should not be considered the highest standard that should be applicable.

One commenter suggested that NRC and DOT consider adopting a set of guiding principles to assure that harmonization is done in the best interest of public health and safety.

Another commenter suggested that NRC adopt the IAEA regulations using a similar philosophy as is currently used by NRC, that is, by doing a safety check and ensuring that the level of safety is not diminished.

Two commenters were seeking clarification on the authority of the international organizations over the activities of the U.S. The commenters suggested that if these organizations are directly influencing what U.S. regulatory agencies do, then the public has the right to more knowledge about their activities. One commenter suggested that any activity to harmonize international regulations with those of the U.S. should be done in open, accountable, democratic forums.

September 20, 2000, Meeting

Several commenters were frustrated with the rulemaking process. These commenters indicated that a lack of easy access to pertinent resources, including TS–R–1 and relevant sections of the regulations, made it difficult to understand the nature, need, and potential impacts of the proposed changes. These commenters suggested that NRC seek alternative publication methods for relevant documents, such as posting the documents on the NRC website.

Six commenters stated that NRC should only suggest changing existing standards if these changes improve or otherwise strengthen existing standards. Two commenters stated that attempting to affect any other change—i.e., not increasing the protection of public health and safety and the environment—is not worth its regulatory costs. However, if NRC is going to pursue these changes, then NRC should weigh heavily potential public and environmental costs. These commenters stated that while NRC is moving towards increased globalization, international standards should be considered a regulatory floor and not a ceiling. One commenter specifically cited that NRC should strengthen ''double-casking requirements.''

Three commenters stated that the proposed changes should not be allowed because they would increase public exposure rates without adequately informing the public of any risks associated with the increase. These commenters acknowledged the existence of background exposure rates, but believed that NRC needs to fully inform the public before changing current standards.

Four commenters expressed an interest in better understanding the transportation process and the security arrangements associated with the proposed changes. One commenter specifically requested an explanation to what links existed between this rulemaking process and the NRC, the DOT, and the Department of Energy's (DOE's) currently scheduled shipments of radioactive materials. Another commenter requested an explanation on what security arrangements exist and what preparations NRC and DOT have made to deal with accidents and other such security breaches.

One commenter suggested that the regulatory process be made as open and democratic as possible. This includes ensuring that supporting documents are not too expensive for the public to purchase, or otherwise access. Another commenter suggested that NRC hold additional public meetings to increase public involvement.

September 26, 2000, Meeting

One commenter expressed his appreciation for the NRC using an enhanced rulemaking process and encouraged the NRC to continue using this process.

Three commenters requested an extension of the public comment period to allow for additional public meetings. One commenter suggested that NRC hold not only additional public meetings, but also representative group sessions where Agreement States' representatives from affected cities, citizens' groups, and industry representatives discuss ''the substantive issues that are implicated by ST–1.''

One commenter wanted to ensure that DOT and NRC have a process where NRC would jointly study and, after a reconciliation process, be able to address public comments in a coordinated fashion.

Two commenters found it difficult to clearly identify what changes were being proposed. They requested additional details on the proposed changes and encouraged NRC to define all of the terms and provide background information in the next iteration.

Specifically, they requested information that would enable the public to understand and evaluate the context and rationale for the proposed actions.

Two commenters were concerned that NRC fully examine the impacts of the proposed changes on DOE as well as other Federal agencies, such as the U.S. Environmental Protection Agency (EPA). One of the commenters stated that, to date, he has not seen any such detailed analysis, an analysis the commenter requested at an earlier time. The commenter stated that when NRC has previously relaxed its standards, DOE has followed suit and cited the example of transportation standards.

One commenter stated that NRC should view IAEA standards as minimum, not maximum, thresholds. The commenter requested that when NRC's regulations are more stringent than similar IAEA regulations, we retain that stringency. The commenter stated that he does not want NRC to lower its standards, and would prefer that international standards be raised.

Comments Received on the Website and by Mail

Several commenters indicated the importance of adopting uniform regulations by all countries to ensure safe and uninterrupted transportation of radioactive materials internationally. The commenters indicated that the IAEA serves a vital role in developing regulations governing the international shipment of radioactive materials, and without this guidance, each country would develop its own regulations, thus making compatibility difficult, if not impossible, to achieve. These commenters strongly urged the NRC and DOT to make every effort to harmonize Part 71 with TS–R–1 regulations, as is reasonably achievable.

Several commenters indicated that the public was not involved in the process that developed the TS–R–1 requirements. As a result, there is no objective analysis available for the public to determine which requirements are appropriate to change, and which ones are not.

One commenter suggested that rather than NRC developing parallel regulations with DOT, NRC's regulations should only address those areas under NRC responsibility, such as fissile material and Type B shipments.

Several commenters indicated that NRC must involve interested members of the public, State and local governments, and Tribes in a much broader framework in conjunction with the issuance of the proposed rule. One commenter argued that based on attendance at the public meetings, public participation has been inadequate and not representative. Another commenter noted that the public meetings were scheduled too close to the end of the public comment period, and that any meetings or hearings in conjunction with the proposed rule should be staged early in the comment process.

One commenter suggested that the issues paper did not contain sufficient detail indicating the NRC's positions with respect to each of the issues. The commenter stated that inclusion of this information, including any regulatory drivers, would be helpful in furthering the public's understanding of the basis of these proposed changes, most specifically with respect to adoption of TS–R–1 requirements.

One commenter raised the concern that the issues paper was not uniformly clear as to whether a proposed change would strengthen or weaken the protection of public health and safety in the U.S.

One commenter was concerned that the proposal to harmonize NRC's regulations with international standards does not take into account the special nature of transportation in the U.S. For example, the commenter noted that a significant portion of the transportation occurs over distances exceeding 2,400 miles and often in rural areas, where emergency responders are volunteers with limited training. The commenter stated that regulations should be developed to protect emergency responders and other personnel who could be expected to be in contact with radioactive materials shipments.

Several commenters requested an extension of the public comment period for the issues paper. The commenters cited several examples of why an extension is necessary, including impeded access to relevant information, periods of time during which the PDR was not open to the public, and closure of the Bibliographic Retrieval System for a period of 5 days.

One commenter indicated that over the last several years, the majority of NRC rulemaking initiatives appear to be largely driven by concerns in providing regulatory relief for industry rather than in increasing safety for the public.

One commenter claimed that IAEA standards are colored by consideration of commercial purposes. The commenter requested that NRC set aside commercial considerations in reviewing possible adoption of IAEA standards as NRC is first responsible to the American public and not to the international or domestic nuclear industry.

Two commenters questioned whether NRC would take into account advances in science and engineering and accumulated experience since the development of the IAEA regulations 6 years ago. If not, one commenter argued that the proposed revisions to Part 71 could be outdated before they are issued.

One commenter requested that TS–R–1 be made available for review to fully judge the impact that the proposed changes may have on transportation programs. For example, the commenter noted that one proposed change would result in different shipping names, without specifying those changes.

One commenter suggested that NRC adopt a Transportation Safety Goal documenting the acceptable risk for the transportation of radioactive material.

The public comments were considered in drafting the proposed requirements for 18 of the 19 issues (Issue 19 was added after publication of the issues paper). More details are provided under each issue.

NRC has made copies of publicly released documents available on the website at *http://www.nrc.gov/waste/spent-fuel-transp.html*. Furthermore, the NRC plans to conduct additional public meetings during the proposed rule comment period. The dates and locations of these meetings will be noticed separately.

III. Request for Cost-Benefit and Exposure Information

The NRC staff reviewed all public comments before drafting the proposed requirements in this notice. Summaries of all verbal, written, and electronic comments can be found in NUREG/CR–6712, Summary and Categorization of Public Comments on the Major Revision of 10 CFR Part 71, March 2001). The staff also prepared a draft Regulatory Analysis (draft RA) to assess the economic impact of the proposed requirements. The draft RA is also published for public comment (for announcement, see Section XII).

The NRC staff, as directed by the Commission, is continuing to solicit cost-benefit and exposure data from the public and industry to quantify the impact of the proposed Part 71 amendments. The NRC believes that this data will assist the Commission in: (1) Making an informed decision regarding the proposed IAEA compatibility changes, and (2) avoiding the promulgation of amendments that may result in unforeseen and unintended negative impacts, especially in view of the fact that the current regulations in Part 71 have provided adequate protection of the public health and safety.

To help focus the public and industry and to capture the most data, the following request for information is presented in three groups: (1) General requests that apply to all 19 issues, (2) requests that apply only to the IAEA-related changes, and (3) issue-specific staff questions.

Request for Information on All 19 Issues

The Commission is inviting comments from all stakeholders (Agreement States, public interest groups, and industry representatives) to address the overall impact of this proposed rule. Specifically, the Commission is soliciting: (1) Quantitative information and data on the costs and benefits which might occur if these proposed changes were adopted; (2) operational data on radiation exposures (increased or reduced) that might result from implementing the Part 71 proposed changes; (3) whether the proposed changes are adequate to protect public health and safety; (4) whether other changes should be considered, including providing cost-benefit and exposure data for these suggested changes; and (5) how should specific risk considerations (i.e., data on what can happen, how likely is it, what are the consequences) be factored into the proposed amendments.

Request for Information on the IAEA-Related Issues (Issues 1–11)

The NRC recognizes the importance, from an international commerce standpoint, of having the packaging and transportation regulations in Part 71 compatible with the IAEA's TS–R–1. However, before adoption, the NRC seeks to quantify the impact of adopting these IAEA regulations. Development of the IAEA TS–R–1 did not directly involve the public or include a cost-benefit analysis. In contrast, NRC's practice is to consider costs and benefits in its regulatory analysis, and NRC is prepared to differ from the TS–R–1 standards, at least for domestic purposes, to the extent the standards cannot be justified from a cost-benefit perspective, especially given the current regulations in Part 71 have provided adequate protection of the public health and safety.

Therefore, the NRC is inviting public comments on the IAEA-related issues, Issues 1–11. Specifically, the Commission is soliciting cost-benefit data to quantify the economic impact of harmonizing with the 11 IAEA changes on the domestic commerce and international commerce of packages containing radioactive material. The NRC is interested in determining: (1) whether the benefits of harmonization with the IAEA standards may exceed the costs, or may result in other health and safety problems resulting from dual standards between domestic (Part 71) and international (TS–R–1) requirements, and (2) whether the NRC should adopt only some of the 11 IAEA changes.

Request for Responses to Issue-Specific Questions:

Issue 2—Radionuclide Exemption Values

What impacts, if any, would result for industries that possess, use, or transport materials currently exempt from regulatory control (*e.g.,* unimportant source material under 10 CFR 40.13) if adoption of the radionuclide exemption values were to occur in Part 71?

What impacts, if any, would result for industries that transport natural material and ores containing naturally-occurring radionuclides which are not intended for processing for economic use of their isotopes (e.g., phosphate mining, waste products from the oil and gas industry), if the TS–R–1 exemption values are adopted, but without the ''10 times the applicable exemption values'' provision?

Another possible impact of the proposed radionuclide exemption values is in the area of waste disposal sites which are regulated by EPA under the Resource Conservation and Recovery Act (RCRA). The acceptance limit in these sites for materials containing radioactive residuals is the existing 70 Bq/g (0.002 μCi/g) standard used by DOT, NRC, and EPA. Presently, only the NRC and DOT are proposing to adopt the exemption values, which may result in situations where shipment of materials with residual radioactivity would be allowed for transportation under the new exemption values but would not be allowed for disposal in RCRA sites.

What cost impacts or other problems, if any, would result from adoption of the exemption values, in Part 71 and DOT regulations, for industries or entities involved in the shipment and disposal of materials with residual activity to RCRA sites?

Issue 3—Revision of A_1 and A_2

What impacts, if any, would result for the radiopharmaceutical industry in terms of cost and worker dose by adopting the lower international A_2 value, rather than retaining the current A_2 value for domestic shipment of molybdenum-99?

What impacts, if any, would result for industry in terms of cost and worker dose by retaining the current A_1 and A_2 values for californium-252, rather than adopting the international A_1 and A_2 values?

What impacts, if any, would result for industry in terms of cost and worker dose by not including in Table A–1 (A_1 and A_2 Values for Radionuclides) the 16 radionuclides that are listed in the current Part 71 but not in TS–R–1?

Issue 4—Uranium Hexafluoride UF_6 Package Requirements

Should the current practice of excluding moderators in criticality evaluations for UF_6 packages be continued?

Issue 5—Introduction of the Criticality Safety Index Requirements

What cost or benefit impacts would result if the per package Criticality Safety Index (CSI) were to change from 10 to 50?

Issue 6—Type C Packages and Low Dispersible Material

NRC requests information on the need for Type C packages, specifically on the number of package designs and the timing of future requests for Type C package design approvals.

Issue 8—Grandfathering Previously Approved Packages

Under what conditions should packagings be removed from service?

What are the cost or benefit impacts associated with the proposal to remove B( ) packages from service?

Issue 10—Crush Test for Fissile Material Package Design

What are the cost or benefit impacts of imposing the crush test requirement on fissile material package designs?

Issue 12—Special Package Approval

What additional limitations, if any, should apply to the conditions under which an applicant could apply for a package authorization?

Issue 17—Double Containment of Plutonium (PRM–71–12)

What cost or benefit impacts would arise from removal of the double containment requirement for plutonium?

Issue 18—Contamination Limits as Applied to Spent Fuel and High-Level Waste (HLW) Packages

NRC requests information regarding the application of the regulatory limits for removable contamination on the external surfaces of packages used for spent fuel shipments. This information will be most helpful if respondents also

indicate the cask design used and whether or not the cask is fitted with a protective cover prior to immersion in the spent fuel pool. Specifically, for previous spent fuel shipments, information is sought on:

(1) The removable contamination level on the cask surface after the cask has been loaded, removed from the spent fuel pool, and dried;

(2) The dose attributable to any decontamination efforts, including external dose from cask and facility radiation fields and internal dose from airborne radioactivity in the cask handling/loading areas;

(3) The removable contamination level on the cask surface after decontamination efforts and before shipment; and

(4) The removable contamination levels on the cask surface upon receipt at the destination facility.

IV. Discussion

This section is structured to present and discuss each issue separately (with cross references as appropriate). Each issue has four parts: Background, Discussion, NRC Proposed Position, and Affected Sections. The discussion section summarizes the public comments, NRC staff consideration of public comments and of technical and policy issues, and the regulatory analysis for that issue.

A. TS–R–1 Compatibility Issues

Issue 1. Changing Part 71 to the International System of Units (SI) Only

Background. TS–R–1 uses the SI units exclusively. This change is stated in TS–R–1, Annex II, page 199: ''This edition of the Regulations for the Safe Transport of Radioactive Material uses the International System of Units (SI).'' The change to SI units exclusively is evident throughout TS–R–1. TS–R–1 also requires that activity values entered on shipping papers and displayed on package labels be expressed only in SI units (paragraphs 543 and 549). Safety Series No. 6 (TS–R–1's predecessor) used SI units as the primary controlling units, with subsidiary units in parentheses (Safety Series 6, Appendix II, page 97), and either units were permissible on labels and shipping papers (paragraphs 442 and 447).

The TS–R–1 change is in conflict with the NRC Metrication Policy issued on June 19, 1996 (61 FR 31169), which allows a dual-unit system to be used (SI units with customary units in parentheses). The NRC Metrication Policy was designed to allow market forces to determine the extent and timing for the use of the metric system of measurements. The NRC is committed, in that policy, to work with licensees and applicants and with national, international, professional, and industry standards-setting bodies [*e.g.,* American National Standards Institute (ANSI), American Society for Testing and Materials (ASTM), ASME] to ensure metric-compatible regulations and regulatory guidance. The NRC encouraged its licensees and applicants, through its Metrication Policy, to employ the metric system wherever and whenever its use is not potentially detrimental to public health and safety, or its use is economic. The NRC did not make metrication mandatory by rulemaking because no corresponding improvement in public health and safety would result, but rather, costs would be incurred without benefit. As a result, licensees and applicants use both metric and customary units of measurement.

According to the NRC's Metrication Policy, the following documents should be published in dual units (beginning January 7, 1993): new regulations, major amendments to existing regulations, regulatory guides, NUREG-series documents, policy statements, information notices, generic letters, bulletins, and all written communications directed to the public. Documents specific to a licensee, such as inspection reports and docketed material dealing with a particular licensee, will be issued in the system of units employed by the licensee.

Currently, Part 71 uses the dual-unit system in accordance with the NRC Metrication Policy.

Discussion. Oral comments received at the public meetings, as well as written comments received on the issues paper, indicate opposition to the use of SI units only. Most commenters were opposed to switching to SI units only, and supported the continued use of the dual-unit system. At the August 10 meeting, a radiopharmaceutical industry representative commented that the Food and Drug Administration (FDA) requires the use of customary units (curie units), while shipping papers always list the activity in becquerels with curies in parentheses. The representative stated that while that presents some problems now, the industry is able to handle it. By moving to a system where the shipping papers are in SI units only, a situation would be created where the package contents are expressed in curies, while shipping papers and labels are expressed in becquerels. This could be confusing, especially when comparing the shipping papers to the contents. The implication is that this situation could create complications at the shipment destination as personnel would have to perform unit conversions to match package contents with the shipping papers. Furthermore, there was a concern that this could result in errors in patient administrations. Other commenters indicated that this change would result in significant costs for industry, with no apparent safety benefit.

Another commenter indicated that, although the U.S. has adopted a policy of shifting to SI units, this policy has not been implemented. Several commenters argued that requiring the use of SI units only for domestic shipments of radioactive materials, when the balance of the nation's activities are conducted in customary units, would cause confusion as well as possible safety issues if misunderstandings or miscalculations were to occur. The commenters noted that the majority of individuals (including emergency response workers) are more accustomed to using customary units, and by requiring the use of SI units, problems would occur in converting customary units to SI units. As a result, the commenters believed that this could result in an increased risk of inadvertent exposure of workers to radiation.

One commenter indicated that SI units are currently required to be used in certain cases for shipping and believed that such a change would pose little risk. However, the commenter added that any such change should be accompanied by a 3-year delay in the effective date to allow for proper transition.

NRC staff notes that the use of SI units only would conflict with the NRC's Metrication Policy, which allows the use of a dual-unit system for measurements. The statement made in NRC's final Metrication Policy, ''* * * the NRC believed and continues to believe that if metrication were made mandatory by a rulemaking, no corresponding improvement in public health and safety would result but costs would be incurred without benefit,'' still stands.

The NRC draft regulatory analysis (draft RA) indicates that maintaining the existing policy of allowing the use of dual units is appropriate from a safety, regulatory, and cost perspective. A change to require SI units only would necessitate an exemption by the Commission from its dual-units policy, and would result in an inconsistency between Part 71 and other parts of the Commission's regulations. Further, anticipated costs to industry for implementing the new requirement

(e.g., training, recalculations), estimated to be between $12.6 and $16.3 million, would be avoided if the dual-unit system is maintained. In addition, while NRC would incur $15,000 in costs by converting from one system of units to another, this cost is offset by a savings in resources for not proceeding with rulemaking activities to implement the change. As discussed by several commenters, the change to SI units only could result in the potential for adverse impact on the health and safety of workers and the general public as a result of unintended exposure in the event of shipping accidents, or medical dose errors, caused by confusion or erroneous conversion between the currently prevailing customary units and the new SI units by emergency responders or medical personnel.

The NRC considered the Commission policy on this issue, the above public comments, and the draft RA of the impact of this change, and concluded that adopting the IAEA use of SI units only in Part 71 would have both a cost impact and potentially negative impact on workers and public health and safety.

NRC Proposed Position. The NRC does not intend to change Part 71 to use SI units only, nor does it intend to impose on Part 71 licensees, certificate holders, or applicants for a CoC the use of SI units only. While TS–R–1 uses SI units only, it does not specifically prohibit the use of a dual-unit system (SI units and customary units). Therefore, the NRC will continue to use the dual-unit system in Part 71.

Affected Sections. None (not adopted).

Issue 2. Radionuclide Exemption Values

Background. The DOT currently uses a specific activity threshold of 70 Bq/g (0.002 μCi/g) for defining a material as radioactive for transportation purposes. DOT regulations apply to all materials with specific activities that exceed this value. Materials are exempt from DOT's transportation regulations if the specific activity is equal to or below this value. The 70-Bq/g (0.002-μCi/g) specific activity value is applied collectively for all radionuclides present in a material.

Within § 71.10, the NRC uses the same specific activity threshold as a means of determining if a radioactive material is subject to the requirements of Part 71. Materials are exempt from the transportation requirements in Part 71 if the specific activity is equal to or below this value. Although the materials may be exempt from any additional transportation requirements under Part 71, the requirements for controlling the possession, use, and transfer of materials under Parts 30, 40, and 70 continue to apply, as appropriate, to the type, form, and quantity of material.

During the development of TS–R–1, it was recognized that there was no technical justification for the use of a single activity-based exemption 70-Bq/g (0.002-μCi/g) value for all radionuclides. It was concluded that a more rigorous technical approach would be to base radionuclide exemptions on a uniform dose basis, rather than a uniform specific activity (also known as activity concentration) basis.

By 1994, the IAEA and other international health-related organizations had developed the International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources, IAEA Safety Series No. 115. (This document is sometimes referred to informally as the Basic Safety Standards, or BSS.) During the preparation of this document, a set of principles had been developed and accepted for determining when exemption from regulation was appropriate. One of the exemption criteria was that the effective dose expected to be incurred by a member of the public from a practice (e.g., medical use of radiopharmaceuticals in nuclear medicine applications) or a source within a practice should be unlikely to exceed a value of 10 μSv (1 mrem) per year. IAEA Member State researchers developed a set of exposure scenarios and pathways which could result in exposure to workers and members of the public. These scenarios and pathways were used to calculate radionuclide exemption activity concentrations and exemption activities which would not exceed the recommended dose (see Safety Series No. 115, Schedule I, ''Exemptions'').

To investigate the exemption issue from a transportation perspective during the development of TS–R–1, IAEA Member State researchers calculated the activity concentration and activity for each radionuclide that would result in a dose of 10 μSv (1 mrem) per year to transport workers under various BSS and transportation-specific scenarios. Due to differences in radionuclide radiation emissions, exposure pathways, etc., the resulting radionuclide-specific activity concentrations varied widely. The appropriate activity concentrations for some radionuclides were determined to be less than 70 Bq/g (0.002 μCi/g), while the activity concentrations for others were much greater. However, the calculated dose to transport workers that would result from repetitive transport of each radionuclide at its exempt activity concentration was the same [(10 μSv) (1 mrem)] per year. For the single activity-based value, the opposite was true, i.e., the exempt activity concentration was the same for all radionuclides (70 Bq/g) (0.002 μCi/g), but the resulting doses under the same transportation scenarios varied widely, with annual doses ranging from much less than 10 μSv (1 mrem) per year for some radionuclides to greater than 10 μSv (1 mrem) per year for others. The radionuclide-specific activity concentration values reduced the variability in doses that were likely to result from exempt transport activities.

IAEA noted that the exempt activity concentrations calculated for transportation scenarios were less than those found in Safety Series No. 115 (BSS), Table I-I, ''EXEMPTION LEVELS: EXEMPT ACTIVITY CONCENTRATIONS AND EXEMPT ACTIVITIES OF RADIONUCLIDES (ROUNDED)'', but not by more than a factor of 100. IAEA did not believe the differences warranted a second set of exemption values, and therefore adopted the Safety Series No. 115 (BSS) values in TS–R–1. These values are found in TS–R–1, paragraphs 401–406, and in Tables I and II.

A consequence of using the BSS exemption values for transportation is that the estimated average annual dose under the transportation scenarios exceeds the 10 μSv (1 mrem) per year criterion for some radionuclides. The staff has estimated that the average annual dose per radionuclide under the transportation scenarios using the BSS exemption values for a representative list of 20 radionuclides is 0.25 mSv (25 mrem) per year. However, the staff estimates that the corresponding dose for the current 70 Bq/g (0.002 μCi/g) exemption value, using the same transportation scenarios and radionuclides, is approximately 0.5 mSv (50 mrem) per year. Although both the current exemption value and the BSS exemption values result in an estimated average dose per radionuclide that exceeds the criterion, the dose estimated for the BSS exemption values is significantly less than that estimated for the current 70 Bq/g (0.002 μCi/g) exemption value.

Note that some nuclides listed in Table I have a reference to footnote (b). These nuclides have the radiological contributions from their daughter products (progeny) already included in the listed value. For example, natural uranium [U (nat)] in Table I has a listed activity concentration for exempt material of 1 Bq/g (2.7 x 10–5 μCi/g). This means the activity concentration of the uranium is limited to 1 Bq/g (2.7 x 10–5 μCi/g), but the total activity

concentration of an exempt material containing 1 Bq/g (2.7 x 10–5 μCi/g) of uranium will be higher (approximately 7 Bq/g (1.9 x 10–4 μCi/g)) due to the radioactivity of the daughter products.

The basis for the exemption values, as discussed in the draft Advisory Material for the Regulations for the Safe Transport of Radioactive Material, TS–G–1.1, paragraphs 107.5 and 401.3, indicates that materials with very low hazards can be safely exempted from the transportation regulations. If the exemptions did not exist, enormous amounts of material with only slight radiological risks, materials which are not ordinarily considered to be radioactive, would be unnecessarily regulated during transport.

Based on TS–R–1, paragraph 236, when both the activity concentration for exempt material and the activity limit for an exempt consignment are exceeded, the material or consignment must meet applicable transportation regulations. Paragraph 404 of TS–R–1 specifies how exemption values may be determined for mixtures of radionuclides.

Some of the lower activity concentration values might include NORM. As an example, ores may contain NORM. In regard to transporting NORM, one petroleum industry representative stated there are no findings that indicate the current standard fails to protect the public, and that there is no benefit in making the threshold more stringent. Further, it would have a significant impact on their operations. Other similar comments were received during the public meetings. The overall impact would be that some material formerly not subject to the radioactive material transport regulations may need to be transported as radioactive material and therefore meet the corresponding applicable DOT transport requirements.

IAEA recognized that application of the activity concentration exemption values to natural materials and ores might result in unnecessary regulation of these shipments, and established a further exemption for certain types of these materials. Paragraph 107(e) of TS–R–1 further exempts: ''natural material and ores containing naturally occurring radionuclides which are not intended to be processed for use of these radionuclides provided the activity concentration of the material does not exceed 10 times the values specified in paragraphs 401–406.''

Discussion. Comments were received on this issue during the public meetings, by mail, and on the NRC web site. One commenter stated that the NRC should reference all DOT equivalent regulations (the radionuclide exemption values and all others) to prevent conflict between the NRC and DOT regulations. Two commenters cautioned that moving from one exemption value to different values for each radionuclide could result in more complicated compliance and enforcement scenarios. For example, one commenter indicated that the 70–Bq/g (0.002–μCi/g) exemption limit is also used as a standard by EPA under the RCRA as the permit limit for the acceptance of material containing radioactive residuals. Any changes to this limit could result in the preclusion of certain materials for disposal at permitted disposal facilities. Some commenters indicated that the revised exemption values should apply not only to domestic shipments but to exported shipments as well.

One commenter indicated that this change will have a significant unintended impact on its operations because most of the oil and gas shipments would not be exempt under the new rule.

One commenter indicated that such a change would result in an increase in the number of shipments by requiring smaller quantities to be shipped due to the lower exemption values. Another commenter suggested that the use of radionuclide-specific exemption values would not result in an increase in the number of packages being shipped, but would result in more shipments being labeled as radioactive. The commenter argued that because many of these shipments are currently being made as ''nonhazardous'' shipments, many of the responses to accidents will be for minimal hazard materials representing insignificant risks that do not warrant increased response safety. The commenter stated that this would not result in increased safety, but would instead divert emergency response personnel from other, more significant, tasks.

Several commenters reflected a belief that, for some radionuclides, the new higher values would be a relaxation of the regulations, and thus will adversely impact public health and safety. A few commenters indicated that NRC should actually look at making the exemption values more stringent rather than reducing the level of protection currently afforded the public. One commenter suggested that, before adopting any of the exemption values contained in TS–R–1, NRC should scrutinize the values to determine whether they are justified as protective of human health and the environment.

A few commenters supporting the retention of the current Part 71 exemption values indicated that a move to radionuclide-specific exemption values would result in increased costs while yielding no additional safety benefit.

The overall impact would be that some previously exempted material may need to be transported as radioactive material and therefore would need to meet applicable DOT transport requirements. While these activity concentration values would impact certain sectors, the NRC staff believes that the impact of not adopting the international standard would be significantly greater. Therefore, the NRC is proposing to adopt the radionuclide exemption values to assure continued consistency between domestic and international regulations.

In § 71.10(b)(3), the 0.74–TBq (20–Ci) exemption for special form americium and special form plutonium would be removed, except for ^{244}Pu. This provision was originally provided in Part 71 to permit the transportation, in domestic commerce within the United States, of well-logging sealed sources containing up to 0.74 TBq (20 Ci) of radioactive material in Type A packages, even though that quantity of special form americium or plutonium was greater than the individual A_1 limits for these radionuclides. However, over time, the A_1 limits have been raised so that currently only ^{244}Pu has an A_1 limit less than 0.74 TBq (20 Ci) (i.e., 0.4 TBq or 10.8 Ci). Consequently, this exemption is unnecessary for special form americium and special form plutonium, but is still needed for ^{244}Pu.

To prevent an unnecessary economic impact on industry, NRC staff believes the 0.74–TBq (20–Ci) exemption for special form ^{244}Pu, transported in domestic commerce, should be retained as a new § 71.14(b)(2). Furthermore, an exception would be added to § 71.14(b)(1) indicating that paragraph (b)(1) does not apply to special form ^{244}Pu transported in domestic commerce. This exception to the exemption would provide regulatory consistency between paragraphs (b)(1) and (b)(2), while permitting the continued transportation, within the U.S. only, of well-logging sources in a Type A package—when the source contains more than an A_1 quantity of ^{244}Pu, but less than 0.74 TBq (20 Ci). For international shipments, the A_1 quantity limit for special form ^{244}Pu would continue to apply.

The NRC would include the TS–R–1 exemption values in a new table in Appendix A (Table A–2). Additionally, NRC recognized that changes were also required to Appendix A. Specifically, changes would be needed to paragraph II to correct the following problems: (1)

The existing paragraph is not in plain language; (2) Guidance is needed on how to determine exempt material activity concentrations and exempt consignment activity limits for unlisted radionuclides; (3) The method of requesting Commission approval, if new Table A–3 is not used, needs to be specified; and (4) The existing requirement on requesting NRC prior approval is not listed in the approved Information collection requirements of § 71.6.

The NRC draft RA indicates that adopting the radionuclide-specific exemption values contained in TS–R–1 is appropriate from a safety, regulatory, and cost perspective. Adoption of these values would provide a consistent level of protection for all radionuclides and result in enhanced regulatory efficiency for the NRC and consistency among NRC, IAEA, and DOT. In addition, adoption would result in a single system for determining if materials are subject to domestic or international regulations (e.g., an imported package from England or France, which is exempt, would also be exempt in the United States). NRC believes that this increase in regulatory efficiency and potential cost savings, in some cases, more than offsets the potential increased costs to industry. These costs are anticipated to include minor administrative and procedural changes to use radionuclide-specific exemptions. Also, industry would expend resources to identify the radionuclides in a material, measure the activity concentration of each radionuclide, and apply the ''mixture rule'' to ensure that a material is exempt. This is in contrast to the current approach of verifying that the material's total concentration is less than 70 Bq/g (0.002 μCi/g). Further, because some low-level materials may be newly brought into the scope of the regulations, some additional costs may be incurred. However, NRC believes that these costs would be offset by the fact that some materials may be moved outside the scope of the regulations, resulting in a cost savings. Cost savings for shippers of low-level materials shipping both domestically and internationally would also be decreased because they would only have to ensure compliance with one set of requirements as opposed to two distinctly separate sets of requirements. Also, nonadoption of the TS–R–1 values could result in significant negative cost impacts on international commerce. Finally, NRC does not believe that adopting these values would have a significant effect on the total number of shipments domestically or internationally. The changes would also not significantly affect the way these materials are handled.

The NRC considered the above public comments and the draft RA of this change, and concluded that adopting the new IAEA, dose-based, exemption values would improve public health and safety by establishing a consistent dose-model application for minimizing potential dose to transport workers. Within the United States, DOT has the responsibility for regulating the classification of radioactive materials. DOT is also adopting the TS-R–1 exemption concentration activity and exempt consignment values, and the NRC is proposing to make conforming changes to Part 71. While these activity concentration values will impact certain sectors, the impact of not adopting the international standard would be significantly greater. By adopting the provision to allow natural material and ores containing NORM, which are not intended to be processed for the radionuclides, to have an activity 10 times the exemption value, the NRC believes that Part 71's impact on the mineral and petroleum industries will be minimized.

NRC Proposed Position. The NRC is proposing to adopt the radionuclide exemption values in TS–R–1 to assure continued consistency between domestic and international regulations for the basic definition of radioactive material. This adoption into NRC regulations would not impact the Memorandum of Understanding (MOU) (July 2, 1979; 44 FR 38690) between DOT and NRC. The exemptions in existing § 71.10 would be revised to reflect the exempt concentration and exempt consignment values of Appendix A, Table A–2. In addition, provisions for 10 times applicable values would be included for NORM and other natural materials. These changes would conform this rule to DOT's proposed regulations.

Affected Sections. §§ 71.10, 71.88, Appendix A.

Issue 3. Revision of A_1 and A_2

Background. The international and domestic transportation regulations use established activity values to specify the amount of radioactive material that is permitted to be transported in a particular packaging and for other purposes. These values, known as the A_1 and A_2 values, indicate the maximum activity that is permitted to be transported in a Type A package. The A_1 values apply to special form radioactive material, and the A_2 values apply to normal form radioactive material. See § 71.4 for definitions.

In the case of a Type A package, the A_1 and A_2 values as stated in the regulations apply as package content limits. Additionally, fractions of these values can be used (e.g., $1x10^{-3}$ A_2 for a limited quantity of solid radioactive material in normal form), or multiples of these values (e.g., 3,000 A_2 to establish a highway route controlled quantity threshold value).

Based on the results from an updated Q-system (see TS–G–1.1, Appendix I), the IAEA has adopted new A_1 and A_2 values for radionuclides listed in TS–R–1 (see paragraph 201 and Table I). IAEA adopted these new values based on calculations which were performed using the latest dosimetric models recommended by the International Commission on Radiological Protection (ICRP) in Publication 60, ''1990 Recommendations of the ICRP.'' A thorough review of the Q-system also included incorporation of data from updated metabolic uptake studies. In addition, several refinements were introduced in the calculation of contributions to the effective dose from each of the pathways considered. The pathways themselves are the same ones considered in the 1985 version of the Q-system: external photon dose, external beta dose, inhalation dose, skin and ingestion dose from contamination, and dose from submersion in gaseous radionuclides. A thorough, up-to-date radiological assessment has been performed for each radionuclide of potential exposures to an individual should a Type A package of radioactive material be involved in an accident during transport. The new A_1 and A_2 values reflect that assessment.

While the dosimetric models and dose pathways within the Q-system were thoroughly reviewed and updated, the reference doses were unchanged. The reference doses are the dose values which are used to define a ''not unacceptable'' dose in the event of an accident. Consequently, while some revised A_1 and A_2 values are higher and some are lower, the potential dose following an accident is the same as with the previous A_1 and A_2 values. The revised dosimetric models are used internationally to calculate doses from individual radionuclides, and these refinements in the pathway calculations result in various changes to the A_1 and A_2 values. In other words, where an A_1 or A_2 value has increased, the potential dose is still the same—the use of the revised dosimetric models just shows that a higher activity of that radionuclide is actually required to produce the same reference dose. Conversely, where an A_1 or A_2 value has decreased, the revised models show that

less activity of that nuclide is needed to produce the reference dose.

Discussion. Comments on the adoption of the new A_1 and A_2 values were received during the three public meetings and on the NRC website. One commenter stated that to conduct business internationally, there needs to be consistency between the international and domestic regulations. These commenters supported the adoption of the new values into Part 71. Other industry representatives, however, indicated the values should not change as they would need to modify the computer codes at their facility to maintain the ability to accurately meet the regulatory requirements for transportation. Other commenters were concerned about the safety aspects of transportation and the emergency responder's exposure if the new values should be adopted.

Additional comments were received concerning the A_1 and A_2 values for californium-252 and molybdenum-99, respectively. Currently, in Part 71, the A_1 for californium-252 is 0.1TBq (2.7 Ci). The A_1 value in TS–R–1 is $5.0x10^{-2}$ TBq (1.35 Ci). Both NRC and DOT have learned that IAEA is considering changing the A_1 value for californium-252 back to the value currently in 10 CFR Part 71 and 49 CFR in the next edition of TS–R–1. DOT is proposing to retain the current Part 71 A_1 value for californium-252 for domestic commerce. Therefore the NRC is planning to do the same as a conforming action with DOT.

Regarding molybdenum-99, comments were received from the radiopharmaceutical industry concerning the A_2 value. Currently in Part 71, the A_2 value for molybdenum-99 is 0.5 TBq (13.5 Ci). Further, in Appendix A, Table A–1, the A_2 value for molybdenum-99 has a footnote that indicates for domestic use, the A_2 value is 0.74 TBq (20 Ci). Pharmaceutical industry representatives indicated that a change to the TS–R–1 A_2 value of 0.6 TBq (16.2 Ci) for molybdenum-99 would result in a significant increase in the number of packages shipped and in occupational doses due to the lower A_2 value (16.2 Ci versus 20 Ci). DOT is proposing to retain the current exception for molybdenum-99 for domestic commerce, and NRC also believes the current exception for this radionuclide should be retained.

Several commenters opposed NRC's proposal to adopt the IAEA A_1 and A_2 values, arguing that any increase in allowable activity levels is unacceptable, could result in increased risk, and would violate the principle of maintaining safety. One commenter stated that the proposed adoption would change from an activity-based limit system to a dose-based limit system, which is unacceptable because dose-based limits are more difficult to verify and enforce than are activity-based limits.

Several commenters stated that NRC should provide a breakdown of which radionuclides would have increased activity levels, and which would remain the same, to allow for meaningful public comment on the proposed change.

Several commenters indicated that adoption of ICRP–60 into NRC regulations would result in another inconsistency within the regulations. Another commenter disagreed, arguing that NRC runs the risk of eroding public confidence in its regulatory role by accepting, then ignoring, the advice of international experts. The commenter argued that there should be a very strong justification if recommendations of the ICRP are to be discounted.

In general, the new A_1 and A_2 values are within a factor of about three of the earlier values; there are a few radionuclides where the new A_1 and A_2 values are outside this range. A few tens of radionuclides (out of more than 300) have new A_1 values higher than previous values by factors ranging between 10 and 100. This is due mainly to improved modeling for beta emitters. There are no new A_1 or A_2 values that are lower than the previous figures by more than a factor of 10. A few radionuclides previously listed are now excluded, but two additional ones have been added, both isomers of europium-150 and neptunium-236. Many A_1 and A_2 values remain unchanged.

The NRC staff review of TS–R–1 against the current Part 71 has identified 16 radionuclides that are listed in Table A–1 in Part 71 Appendix A, but which do not appear in TS–R–1. These are: Ar–42, Au–196, Es–253, Es–254, Es–254m, Es–255, Fm–255, Fm–257, Ho–163, Ir–193m, Nb–92m, Po–208, Po–209, Re–183, Te–118, and Tm–168. In an effort to maintain compatibility with TS–R–1, the NRC proposes not to include A_1 and A_2 values for these radionuclides in Table A–1. Licensees can use, without NRC approval, the general values for A_1 or A_2 in Table A–3 for individual radionuclides whose identities are known (such as the above 16), but which are not listed in Table A–1. Alternatively, licensees can obtain NRC approval for using specific values for those radionuclides. The NRC staff consulted with the DOT staff on this issue, and DOT is also proposing not to include A_1 and A_2 values for these radionuclides in its revised table of A_1 and A_2 values.

The A_1 and A_2 values were revised by IAEA based on refined modeling of possible doses from radionuclides. The NRC staff believes adoption of the IAEA standard would be an overall benefit to public and worker health and international commerce by ensuring that the A_1 and A_2 values are consistent within and between international and domestic transportation regulations.

The NRC draft RA indicates that adopting the new A_1 and A_2 activity limits specified in TS–R–1 is appropriate from a safety, regulatory, and cost perspective. Adoption of these values would result in enhanced regulatory efficiency for the NRC and consistency among NRC, IAEA, and DOT, especially in the handling of imports and exports. Adoption would result in a single set of values for determining the activity limits for specifying the amount of radioactive material permitted to be transported in a particular package for both domestic and international shipments. In some cases, NRC believes that this increase in regulatory efficiency and potential cost savings more than offsets the potential increased costs. These costs are anticipated to include revisions to shipping programs to implement the new values, modifications to shipping processes to assure compliance with the new values, and training. These costs, however, are expected to be minor because industry already has programs in place that use the A_1 and A_2 values. In addition, NRC would realize additional minor implementation costs in revising the values in Part 71. The NRC draft RA indicated no significant change in the number of shipments per year; therefore, accident frequency would not be affected.

NRC Proposed Position. The NRC is proposing to make a conforming change to Part 71 to adopt the new A_1 and A_2 values from TS–R–1 in Part 71, with the differences as discussed for molybdenum-99 and californium-252. The NRC is also proposing not to include A_1 and A_2 values for the 16 radionuclides that are currently listed in Part 71, but which do not appear in TS–R–1 (see the Discussion section of Issue 3). This action would allow for continued consistency within and between international and domestic transportation regulations for radioactive materials. The DOT is also proposing to adopt the new TS–R–1 A_1 and A_2 values in its regulations, but without the 16 radionuclides cited above. NRC is requesting stakeholder input with regard to the changes focused around the A_1 and A_2 values for californium-252, molybdenum-99, and the 16 radionuclides that will be

removed from Table A–1. NRC is interested in learning what impacts these changes will have on industry.

Affected Sections. Appendix A.

Issue 4. Uranium Hexafluoride Package Requirements

Background. Requirements for uranium hexafluoride (UF_6) packaging and transportation are found in both NRC and DOT regulations. The DOT regulations contain requirements that govern many aspects of UF_6 packaging and shipment preparation, including a requirement that the UF_6 material be packaged in cylinders that meet the ANSI N14.1 standard. NRC regulations address fissile materials and Type B packaging designs for all materials.

TS–R–1 contains detailed requirements for UF_6 packages designed for transport of more more than 0.1 kg UF_6. First, TS–R–1 requires the use of the International Organization for Standardization (ISO) 7195, ''Packaging of Uranium Hexafluoride for Transport.'' Second, TS–R–1 requires that all packages containing more than 0.1 kg UF_6 must meet the ''normal conditions of transport'' drop test, a minimum internal pressure test, and the hypothetical accident condition thermal test (para 630). However, TS–R–1 does allow a competent national authority to waive certain design requirements, including the thermal test for packages designed to contain greater than 9,000 kg UF_6, provided that multilateral approval is obtained. Third, TS–R–1 prohibits UF_6 packages from using pressure relief devices (para 631). Fourth, TS–R–1 includes a new exception for UF_6 packages regarding the evaluation of criticality safety of a single package. This new exception (para 677(b)) allows UF_6 packages to be evaluated for criticality safety without considering the inleakage of water into the containment system. Consequently, a single fissile UF_6 package does not have to be subcritical assuming that water leaks into the containment system. This provision only applies when there is no contact between the valve body and the cylinder body under accident tests, and the valve remains leak-tight, and when there are quality controls in the manufacture, maintenance, and repair of packagings coupled with tests to demonstrate closure of each package before each shipment.

Discussion. One commenter indicated serious concerns about the safety margins for UF_6 packaging. The commenter cited the exception in TS–R–1, paragraph 677(b), which would allow UF_6 packages to be evaluated for criticality without considering the inleakage of water. The commenter cited a report describing one case where UF6 packages with manufacturing defects were used. The commenter indicated that it would be imprudent and unwise public policy to assume that water could not leak into a package containing UF_6.

Another commenter stated that a justification for the reduced regulatory burden has not been established and cannot be done unless a risk study, which determines the level of conservatism currently contained in Part 71, is conducted. Without this analysis, the commenter argued, reduction of regulatory burden leading to inadvertent criticality could lead to loss of life, degradation of the environment, economic repercussions, and degradation of public confidence.

Also, comments at the public meetings supported the NRC view that ANSI N14.1 and ISO 7195 are equivalent. Further, other comments indicated that NRC-certified UF_6 packages already comply with TS–R–1 paragraphs 630 and 677(b).

The provisions of § 71.55(b) specify that a fissile material package must be designed, or the contents limited, so that a single package would be critically safe if water were to leak into the containment vessel. This is a design feature that assures criticality safety in transport, in the unanticipated event that water leaks into the containment vessel, and provides moderating materials for the fissile contents. The proposed new § 71.55(g) would except fissile UF_6 from the requirement that a single package must be critically safe with water inleakage. This is consistent with the worldwide practice in shipping fissile UF_6 and is consistent with ANSI N14.1 and ISO 7195 standards and DOT regulations.

The proposed rule language further restricts use of the exception to a maximum enrichment of 5 weight percent uranium-235. This is the maximum enrichment currently authorized in ANSI N14.1, ISO 7195, and DOT regulations in cylinders larger than 20.3 cm (8 inches) in diameter. For smaller cylinders, the exception is not needed because current enrichments are critically safe by geometry for a single package. The exception, with the enrichment limit, codifies current worldwide practice in shipping fissile uranium hexafluoride. Large quantities of enriched (greater than 5 weight percent uranium-235) UF_6 would require packages that meet the water inleakage standards in § 71.55(b). The staff believes that it is not prudent to expand this exception to include UF_6 shipments with higher uranium enrichments.

The NRC draft RA indicates that revising the current requirements for uranium hexafluoride packages to include an exception from the requirement that single packages must be critically safe from water inleakage is appropriate from a safety, regulatory, and cost perspective. In developing the draft RA, the NRC first determined that there are no substantial differences between ANSI N14.1 standard and ISO 7195 standard for UF_6 packaging, and therefore, there would be no significant cost impacts from this change, because NRC currently requires conformance with ANSI N14.1, but regulatory efficiency would be enhanced by making Part 71 compatible with TS–R–1. The internal pressure test and drop test requirements are currently met by existing package designs that comply with ANSI N14.1. Therefore, there would be limited impact on licensees by this aspect of the NRC action. The NRC staff also considered the United States' earlier opposition (Taylor, 1996) to this change, i.e., the IAEA adopting the UF_6 package requirements. Most of the impact of adopting the TS–R–1 UF_6 provisions would fall on the 30-inch and 48-inch bare cylinders that are within the purview of DOT and for which there is a ''multilateral'' approval option that could be used to mitigate most of this potential impact to licensees. Therefore, the adoption of the TS–R–1 requirements is not expected to have significant impact on fissile package designs for UF_6. (Additional minor costs may be incurred for training for handling overpacks.) Because the changes are not expected to have significant impacts on current package designs, changes in environmental impacts are expected to be negligible.

NRC Proposed Position. The NRC is proposing to adopt § 71.55(g) to address TS–R–1, paragraph 677(b), to exempt certain UF_6 packages from the requirements of § 71.55(b). The requirements in TS–R–1, paragraphs 629, 630, and 631, do not necessitate changes to Part 71 because NRC uses analogous national standards and addresses package design requirements in its design review process. All NRC-certified packages must be used in accordance with DOT requirements (including the UF_6 requirement in 49 CFR 173.420).

Affected Sections. § 71.55.

Issue 5. Introduction of the Criticality Safety Index Requirements

Background. Historically, the IAEA and U.S. regulations (both NRC and DOT) have used a term known as the

Transport Index (TI) to determine appropriate safety requirements during transport. TI has been used to control the accumulation of packages for both radiological safety and criticality safety purposes and to specify minimum separation distances from persons (radiological safety). The TI has been a single number which is the larger of two values: the ''TI for criticality control purposes''; and the ''TI for radiation control purposes.'' Taking the larger of the two values has ensured conservatism in limiting the accumulation of packages in conveyances and in-transit storage areas.

TS–R–1 (paragraph 218) has introduced the concept of a Criticality Safety Index (CSI) separate from the old TI. As a result, the TI was redefined in TS–R–1. The CSI is determined in the same way as the ''TI for criticality control purposes,'' but now it must be displayed on shipments of fissile material (paragraphs 544 and 545) using a new ''fissile material'' label. The redefined TI is determined in the same way as the ''TI for radiation control purposes'' and continues to be displayed on the traditional ''radioactive material'' label.

TS–R–1 (paragraph 530) also increased the allowable per package TI limit [for criticality control purposes (new CSI)] from 10 to 50 for nonexclusive use shipments. No change was made to the per package radiation TI limit of 10 for nonexclusive use shipments. As noted above, a consolidated radiation safety and criticality safety index existed in the past. In this consolidated index, the per package TI limit of 10 was historically based on concerns regarding the fogging of photographic film in transit, because film might also be present on a nonexclusive use conveyance. Consequently, when the single radiation and criticality safety indexes were split into the TI and CSI indexes, the IAEA determined that the CSI per package limit, for fissile material packages that are shipped on a nonexclusive use conveyance, could be raised from 10 to 50. The IAEA believed that limiting the total CSI to less than or equal to 50 in a nonexclusive use shipment provided sufficient safety margin, whether the shipment contains a single package or multiple packages. Therefore, the per package CSI limit, for nonexclusive use shipments, can be safely raised from 10 to 50, thereby providing additional flexibility to shippers. Additionally, no change was made to the per package CSI limit of 100 for exclusive use shipments.

Discussion. Comments received on this proposal indicated that the industry supports the use of the new label ''CSI'' in conjunction with the ''TI'' labels, and stated that separate labels are more meaningful and provide additional safety in transport, as long as the two labels are distinctive, so as to avoid confusion.

In general, public comments received at the meetings supported the use of the CSI. One commenter believed that using the TI as the means to control criticality safety does not provide emergency responders with information on the undamaged condition of the package. Other commenters suggested that NRC should provide the underlying technical justification for the term ''equivalent safety,'' because otherwise, this change would seemingly allow for more packages in a single shipment. The use of CSI provides an equivalent level of safety to using a TI, because the CSI uses the same methodology (§ 71.59) that was used to calculate the criticality portion of the current TI.

One industry commenter disagreed that the CSI requirement is appropriate. The commenter stated that the TI already incorporates the more restrictive value and provides adequate protection. The commenter believed there is no increase in safety by adding this new requirement and, in fact, it would result in more opportunities for human error. Further, the commenter indicated that any benefit for adding the CSI is far outweighed by the additional labor, material, training, and administration costs that would be borne by a company that ships thousands of packages each year.

Increasing the CSI per package limit from 10 to 50 for nonexclusive use shipments was overlooked by NRC staff and was not discussed in the June 2000 Issues Paper or the associated public meetings. Consequently, no stakeholder input was obtained on this aspect of Issue 5 prior to developing the proposed rule.

The NRC draft RA indicates that introducing new CSI requirements into part 71 is appropriate from a safety, regulatory, and cost perspective. NRC would require that applicants for fissile material package design approvals clearly indicate the CSI value for the design. The CoCs the NRC issues for these designs would also need to clearly indicate the CSI value for authorized contents. The adoption of the CSI values would make part 71 consistent with TS–R–1, therefore enhancing regulatory efficiency.

The NRC staff believes that shipping fissile material packages on either an exclusive or nonexclusive use conveyance provides a reasonable assurance that public health and safety and the environment will be adequately protected. Furthermore, shipment on a nonexclusive use conveyance of a single package with a CSI equal to 50, a shipment of 5 packages each with a CSI equal to 10, or 20 packages each with a CSI equal to 2.5, are all safe and provide reasonable assurance of adequate protection. While NRC staff recognizes that the reactivity per package will increase with an increase in the CSI from 10 to 50, staff also believes the limit on the total CSI in a nonexclusive use shipment provides adequate protection against mishandling events. Accordingly, this change will not have a significant safety impact.

The total annual estimated cost of the new label to the nuclear power licensees and material licensees is approximately $1.4 million. [1] Some of these costs would be offset by the fact that for some shipments of fissile material packages, the accumulation of packages for criticality control purposes and the accumulation of packages (including minimum separation distances from persons) for radiological control purposes are shipped independently (the most restrictive criteria would not control the other as is the case with the current dual-use TI). Further, increased efficiency in shipping some fissile material packages could occur by avoiding the situation where separation distance requirements (radiological safety) unduly restrict package accumulation (criticality safety). From a health and safety perspective, emergency responders in accident circumstances (thus public health and safety) benefit from more clearly displayed information upon arrival at the accident scene.

The NRC staff was unable to estimate the magnitude of the impact or cost savings that would arise to licensees due to the increase in the CSI per package limit. However, staff judged that cost savings could be realized because of increased licensee flexibility in shipping a larger number of fissile material packages on less expensive, nonexclusive use conveyances. Therefore, the NRC is requesting stakeholder input on the quantity of shipments in a typical year that would be affected by an increase in the per package CSI limit from 10 to 50 for nonexclusive use shipments and any associated cost savings. Because of lack

[1] This number is estimated by assuming 10 percent of the approximately 2.8 million total annual shipments (or 280,000) contain fissile material requiring lables indicating the CSI and TI. And of this 10 percent, NRC assumes five packages per shipment and $1 per package for labeling, thus arriving at the $1.4 million total annual licensee costs.

of data, the NRC is also requesting stakeholder input on the current number of fissile material shipments typically made per year (i.e., fissile-exempt, fissile general license, or Type A(F) or B(F) packages); the types of material shipped (e.g., waste, laboratory quantities, or production quantities); the shipment method used for these types of fissile material; and whether these are exclusive or nonexclusive use shipments.

NRC Proposed Position. The NRC proposes to adopt the TS–R–1 (paragraph 218) which incorporates a CSI in Part 71 that would be determined in the same manner as the current Part 71 ''TI for criticality control purposes.'' The NRC also proposes to adopt TS–R–1 (paragraph 530) which increases the CSI per package limit from 10 to 50 for fissile material packages in nonexclusive use shipments. A TI will be determined in the same way as the ''TI for radiation control purposes.'' The NRC believes the differentiation between criticality control and radiation protection would better define the hazards associated with a given package and, therefore, provide better package hazard information to emergency responders. The increase in the per package CSI limit may provide additional flexibility to licensees by permitting the increased use of less-expensive, nonexclusive use shipments. However, licensees will still retain the flexibility to ship a larger number of packages of fissile material on an exclusive use conveyance.

Affected Sections. §§ 71.4, 71.18, 71.20, 71.59.

Issue 6. Type C Packages and Low Dispersible Material

Background. TS–R–1 has introduced two new concepts: the Type C package (paragraphs 230, 667–670, 730, 734–737) and the Low Dispersible Material (LDM). The Type C packages are designed to withstand severe accident conditions in air transport without loss of containment or significant increase in external radiation levels. The LDM has limited radiation hazard and low dispersibility; as such, it could continue to be transported by aircraft in Type B packages (i.e., LDM is excepted from the TS–R–1 Type C package requirements). U.S. regulations do not contain a Type C package or LDM category, but do have specific requirements for the air transport of plutonium (§§ 71.64 and 71.74). These specific NRC requirements for air transport of plutonium would continue to apply.

The Type C requirements apply to all radionuclides packaged for air transport that contain a total activity value above 3,000 A_1 or 100,000 A_2, whichever is lesser, for special form material, or above 3,000 A_2 for all other radioactive material . Below these thresholds, Type B packages would be permitted to be used in air transport. The Type C package performance requirements are significantly more stringent than those for Type B packages. For example, a 90-meter per second (m/s) impact test is required instead of the 9-meter drop test. A 60-minute fire test is required instead of the 30-minute requirement for Type B packages. There are other additional tests, such as a puncture/tearing test, imposed for Type C packages. These stringent tests are expected to result in package designs that would survive more severe aircraft accidents than Type B package designs.

The LDM specification was added in TS–R–1 to account for radioactive materials (package contents) that have inherently limited dispersibility, solubility, and external radiation levels. The test requirements for LDM to demonstrate limited dispersibility and leachability are a subset of the Type C package requirements (90-m/s impact and 60-minute thermal test) with an added solubility test, and must be performed on the material without packaging for nonplutonium materials. The LDM must also have an external radiation level below 10 mSv/hr (1 rem/hr) at 3 meters. Specific acceptance criteria are established for evaluating the performance of the material during and after the tests (less than 100 A_2 in gaseous or particulate form of less than 100-micrometer aerodynamic equivalent diameter and less than 100 A_2 in solution). These stringent performance and acceptance requirements are intended to ensure that these materials can continue to be transported safely in Type B packages aboard aircraft.

In 1996, the NRC communicated to the IAEA that the NRC did not oppose the IAEA adoption of the newly created Type C packaging standards (letter dated May 31, 1996, from James M. Taylor, EDO, NRC, to A. Bishop, President, Atomic Energy Control Board, Ottawa, Canada). However, Mr. Taylor stated in the letter that to be consistent with U.S. law, any plutonium air transport to, within, or over the U.S. will be subject to the more rigorous U.S. packaging standards.

Discussion: Comments from the public suggested that Type C standards might increase the number of shipments with smaller quantities of material using the same Type B containers to avoid the cost of developing Type C packages and to avoid the requirement of meeting the new Type C package standards. One commenter indicated that any proposal to change package design requirements should only be contemplated after a thorough technical review that has independently justified the change as protective.

However, one commenter stated that NRC should remove from its regulations the plutonium-specific requirements for air transport, and replace them with the Type C package requirements. Also, the commenter stated that because Type C package development would take a number of years, industry would work with the NRC to define tests, analyses, and criteria for demonstrating compliance with the Type C package standards.

One commenter questioned the rigorousness of the testing described in TS–R–1, indicating that the minimum acceptable impact speed should be increased to at least 129 m/s, as was mandated by Congress.

The staff evaluated the Type C package, and proposes that the NRC not adopt Type C or LDM requirements at this time. The bases for this staff proposal include: (1) IAEA development of aircraft accident severity information through a coordinated research project for further evaluation of the Type C and LDM requirements; (2) the fact that there are very few anticipated shipments affected by these requirements; (3) DOT rules that permit the use of IAEA standards in nonplutonium import/export shipments of foreign certified Type C containers, so that international commerce is not impacted; (4) NRC's domestic regulations currently in place (§§ 71.64 and 71.74), based on specific statutory mandates, governing air transport of plutonium (plutonium air transport was a considerable factor in IAEA adoption of Type C provisions); and (5) comments made by the public on the issues which generally disagreed with or questioned the rigor of the Type C tests, and supported NRC maintaining its current regulatory requirements for the safety of plutonium air shipments.

The DOT reviews the use of packages for import or export shipment. Consequently, foreign Type C packages could be approved by DOT for import and export only. The NRC does not believe that a Type C package is needed for domestic commerce; therefore, no provisions would be added to Part 71 relating to Type C packages. However, should DOT request that NRC perform a technical evaluation for a revalidation of a foreign Type C package design, NRC would evaluate the design against TS–R–1 Type C standards. Similarly, if requested by DOT, NRC would review a domestic Type C package design intended for use in international

commerce against TS–R–1, and provide NRC's recommendation to DOT. (Note that NRC revalidation of designs for DOT does not constitute NRC issuance of a CoC.)

The NRC draft RA indicates that not adopting the TS–R–1 Type C or LDM provisions in Part 71 is appropriate from a safety, regulatory, and cost standpoint. There may be some reduction in regulatory efficiency as a result of the nonadoption of the TS–R–1 requirements, which could result in NRC case-by-case reviews to support international shipments. NRC would continue to use its proven, safe regulatory requirements for air transport of plutonium. Further, NRC staff resources are conserved by nonadoption, and no additional costs would be incurred by industry. Any additional costs to industry would involve development costs for the design of new packages to meet the Type C requirements rather than using existing Type B packages.

NRC Proposed Position. The NRC would not adopt Type C or LDM requirements at this time.

Affected Sections. None (not adopted).

Issue 7. Deep Immersion Test

Background. TS–R–1 expanded the performance requirement for the deep water immersion test (paragraphs 657 and 730) from the requirements in the IAEA Safety Series No. 6, 1985 edition. Previously, the deep immersion test was only required for packages of irradiated fuel exceeding 37 PBq (1,000,000 Ci). The deep immersion test requirement is found in Safety Series No. 6, paragraphs 550 and 630, and basically stated that the test specimen be immersed under a head of water of at least 200 meters (660 ft) for a period of not less than one hour, and that an external gauge pressure of at least 2 MPa (290 psi) shall be considered to meet these conditions. The TS–R–1 expanded immersion test requirement (now called enhanced immersion test) now applies to all Type B(U) [Unilateral] and B(M) [Multilateral] packages containing more than 10^5 A_2, as well as Type C packages.

In its September 28, 1995 (60 FR 50248), rulemaking for Part 71 compatibility with the 1985 edition of Safety Series No. 6, the NRC addressed the new Safety Series No. 6 requirement for spent fuel packages by adding § 71.61, ''Special requirements for irradiated nuclear fuel shipments.'' Currently, § 71.61 is more conservative than Safety Series No. 6 with respect to irradiated fuel package design requirements. It requires that a package for irradiated nuclear fuel with activity greater than 37 PBq (10^6 Ci) must be designed so that its undamaged containment system can withstand an external water pressure of 2 MPa (290 psi) for a period of not less than one hour without collapse, buckling, or inleakage of water. The conservatism lies in the test criteria of no collapse, buckling, or inleakage as compared to the ''no rupture'' criteria found in Safety Series No. 6 and TS–R–1. The draft advisory document for TS–R–1 (TS–G–1.1, paragraphs 657.1 to 657.7) recognizes that leakage into the package and subsequent leakage from the package are possible while still meeting the IAEA requirement.

The Safety Series No. 6 test requirements were based on risk assessment studies that considered the possibility of a ship carrying packages of radioactive material sinking at various locations. The studies found that, in most cases, there would be negligible harm to the environment if a package were not recovered. However, should a large irradiated fuel package (or packages) be lost on the continental shelf, the studies indicated there could be some long term exposure to man through the food chain. The 200-meter (660-ft) depth specified in Safety Series No. 6 is equivalent to a pressure of 2 MPa (290 psi), and roughly corresponds to the continental shelf and to depths that the studies indicated radiological impacts could be important. Also, 200 meters (660 ft) was a depth at which recovery of a package would be possible, and salvage would be facilitated if the containment system did not rupture. (Reference Safety Series No. 7, paragraphs E–550.1 through E–550.3.)

The expansion in scope of the deep immersion test was due to the fact that radioactive materials, such as plutonium and high-level radioactive wastes, are increasingly being transported by sea in large quantities. The threshold defining a large quantity as a multiple of A_2 is considered to be a more appropriate criterion to cover all radioactive materials, and is based on a consideration of potential radiation exposure resulting from an accident.

Discussion. Several comments received at the public meetings, as well as written comments received on the Issues Paper, indicated support for retaining the current, more stringent, requirements contained in § 71.61 with respect to not allowing collapse, buckling, or inleakage of water in the containment vessel. One commenter was concerned that the term ''rupture'' seemed less stringent than ''collapse, buckling, or inleakage of water.'' The commenter noted, however, that the issues paper does not include definitions for ''rupture'' or ''buckling,'' so it is difficult to know which term is more or less stringent. Another commenter believed that the proposed test requirement of withstanding underwater pressure for at least an hour is insufficient. The commenter explained that it is unrealistic to expect to recover nuclear materials from the water within 1 hour after a major accident.

One commenter questioned whether there was sufficient technical justification for relaxing the current NRC test criteria for packages of irradiated nuclear fuel. The commenter stated that a lot of environmental damage can occur before a rupture develops, and that the proposal does nothing to ensure that packages are as safe as they can be.

Another commenter noted that TS–R–1 refers only to normal form material for the immersion test. Specifically, the commenter asked what the criteria are for a special form A_1 quantity, and whether the deep immersion test was necessary for B(U) packages for special form materials. NRC reviewed the IAEA regulations and believes that this requirement applies to both normal form and special form material. Similarly, one commenter noted that, in practicality, the quantities listed would be limited to irradiated fuel elements, and that shipment of radioisotopes rarely contain these amounts. This commenter suggested that the present criteria be maintained and extended to cover all packages with activity levels greater than or equal to 10_5 A_2 quantities with the note that this is more conservative than TS-R–1 requirements. The commenter stated this should eliminate the requirement for special review and certification of U.S. origin package designs. For nonirradiated fuel element shipments, the commenter believed there should be no impact on availability and shipping costs because there are few shipments of the required quantities of this material. Finally, the commenter questioned whether, with the application to B(U) packages containing A_1 special form sources, these packages are exempt from this test.

In response to the question about how to address the differences in acceptance standards, two commenters stated that due to the international nature of transportation activities, U.S. transportation regulations should be consistent with IAEA transportation regulations and, therefore, NRC should adopt the TS–R–1 requirements for the enhanced deep immersion test.

Two commenters also addressed whether U.S. origin package designs

should be specifically reviewed and certified before shippers can export them. One commenter said that if the response is not specific to the deep immersion test, but applies to all package design criteria, then the shipment of U.S. certified package designs for import/export use beginning in mid-2001 is entirely dependent upon approval of these designs to TS–R–1 performance standards. The commenter believed that failure to grant U.S. Competent Authority certifications for these designs would seriously hinder the industrial radiography industry, and place U.S. package designers and manufacturers at a strong competitive disadvantage. The commenter added that several of its shipments were not acceptable in several countries when NRC and DOT failed to adopt Safety Series No. 6 in a timely manner.

Another commenter stated that NRC should clarify if previously approved packages would be grandfathered, or if they would have to be recertified by means of a deep immersion test.

The NRC proposes revising Part 71 requiring an enhanced water immersion test for packages used for radioactive contents with activity greater than 10^5 A^2. Section 71.61 currently refers to packages for irradiated fuel with activity greater than 37 PBq (10^6 Ci); the water immersion test would need to be changed to apply to Type B packages containing greater than 10^5 A^2 and Type C packages. Given that any package containing spent fuel with activity greater than 37 PBq (10^6 Ci) would also have an activity significantly greater than 10^5 A^2, such a change would bound Type B spent fuel packages currently addressed in 10 CFR 71.61. Therefore, a specific reference to special requirements for irradiated nuclear fuel shipments would no longer be required.

As mentioned earlier, there is a difference between the test acceptance criteria specified in TS–R–1 and § 71.61. Safety Series No. 6 refers to no rupture, while § 71.61 requires no collapse, buckling, or inleakage of water when subjected to the test conditions. In the September 28, 1995, rulemaking, NRC staff provided justification for the more specific NRC acceptance criteria. The rulemaking stated that: ''NRC has since determined that the term 'rupture' cannot be determined by engineering analysis and that NRC has decided to change the acceptance criteria for the deep immersion test from 'rupture' to 'collapse, buckling, or inleakage of water'.'

Given that the TS–R–1 background material does not provide any new information on defining the term ''rupture'' from that provided for Safety Series No. 6, the NRC intends to retain the current interpretation of ''rupture'' to mean ''collapse, buckling, or inleakage of water,'' in any revision to § 71.61. During the comment period for the proposed rule, should information be provided about how the term ''rupture'' should be defined, or on how foreign countries have certified packages to this criterion, then the NRC will consider this in determining whether the ''collapse, buckling, or inleakage of water'' criteria should be revised before issuing the final rule.

The NRC draft RA indicates that revising Part 71 to require an enhanced water immersion test for packages used for radioactive contents with activity greater than 10^5 A_2 while retaining the current § 71.61 interpretation of ''rupture'' to mean ''collapse, buckling, or inleakage of water,'' is appropriate from a safety, regulatory, and cost perspective. The proposed change would improve regulatory efficiency by bringing U.S. regulations in harmony with the standards contained in TS–R–1. This would improve the efficiency of handling imports and exports and would make U.S. standards compatible with other IAEA Members States.

Implementation of the proposed change could result in costs to licensees as they test and certify packages to the proposed standard. The NRC may incur costs for developing procedures, reviewing and approving test results, and recertifying packages. The proposed change may reduce impacts to public health in the case of an accident. A package tested to the new requirements would be able to withstand pressure at increased depths without collapsing, buckling, or allowing inleakage of water, thereby keeping the radioactive materials enclosed. The likelihood of a member of the public receiving a dose from a package resting in deep water is exceedingly small and would be even smaller if the proposed change were implemented in that the test would apply to a broad range of packages. Moreover, the duration of the test, 1 hour, is reasonable for a package resting in deep water, because the water pressure will be constant, and the 1-hour test will clearly establish if the package can withstand that pressure. A successfully-tested package would be able to withstand the pressure at this depth without rupturing, thereby keeping the radioactive materials enclosed and permitting a reasonable length of time for recovery. Retaining package integrity would prevent the possible expenses of restricting the area (to prevent users such as boaters or fishers from entering the vicinity) and remediating any contamination of the marine environment.

NRC Proposed Position. The NRC proposes to adopt the requirement for enhanced water immersion test for packages used for radioactive contents with activity greater than 10^5 A_2. The NRC intends to retain the current test requirements in § 71.61 of ''one hour without collapse, buckling, or inleakage of water.''

Affected Sections. §§ 71.41, 71.51, 71.61.

Issue 8. Grandfathering Previously Approved Packages

Background. Historically, the IAEA, DOT, and NRC regulations have included transitional arrangements or ''grandfathering'' provisions whenever the regulations have undergone major revision. The purpose of grandfathering is to minimize the costs and impacts of implementing changes in the regulations on existing package designs and packagings. Grandfathering typically includes provisions that allow: (1) Continued use of existing package designs and packagings already fabricated, although some additional requirements may be imposed; (2) completion of packagings that are in the process of being fabricated or that may be fabricated within a given time period after the regulatory change; and (3) limited modifications to package designs and packagings without the need to demonstrate full compliance with the revised regulations, provided that the modifications do not significantly affect the safety of the package.

Each transition from one edition of the IAEA regulations to another (and the corresponding revisions of the NRC and DOT regulations) has included grandfathering provisions. The 1985 and 1985 (as amended 1990) editions of Safety Series No. 6 contained provisions applicable to packages approved under the provisions of the 1967, 1973, and 1973 (as amended) editions of Safety Series No. 6. TS–R–1 includes provisions which apply to packages and special form radioactive material approved under the provisions of the 1973, 1973 (as amended), 1985, and 1985 (as amended 1990) editions of Safety Series No. 6.

TS–R–1 grandfathering provisions (see TS–R–1, paragraphs 816 and 817) are more restrictive than those previously in place in the 1985 and 1985 (as amended 1990) editions of Safety Series No. 6. The primary impact of these two paragraphs is that packagings approved under the 1967 edition of Safety Series No. 6 are no longer grandfathered, i.e., cannot be

used. The second impact is that fabrication of packagings designed and approved under Safety Series No. 6 1985 (as amended 1990) must be completed by a specified date. In regard to special form radioactive material, TS–R–1 paragraph 818 does not include provisions for special form radioactive material that was approved under the 1967 edition of Safety Series No. 6. Special form radioactive material that was shown to meet the provisions of the 1973, 1973 (as amended), 1985, and 1985 (as amended 1990) editions of Safety Series No. 6 may continue to be used. However, special form radioactive material manufactured after December 31, 2003, must meet the requirements of TS–R–1. Within current NRC regulations, the provisions for approval of special form radioactive material are already consistent with TS–R–1.

In TS–R–1, packages approved under Safety Series No. 6 1973 and 1973 (as amended) can continue to be used through their design life, provided the following conditions are satisfied: multilateral approval is obtained for international shipment, applicable TS-R–1 QA requirements and A_1 and A_2 activity limits are met, and, if applicable, the additional requirements for air transport of fissile material are met. While existing packagings are still authorized for use, no new packagings can be fabricated to this design standard. Changes in the packaging design or content that significantly affect safety require that the package meet current requirements of TS–R–1.

TS–R–1 further states that those packages approved for use based on the 1985 or 1985 (as amended 1990) editions of Safety Series No. 6 may continue to be used until December 31, 2003, provided the following conditions are satisfied: TS–R–1 QA requirements and A_1 and A_2 activity limits are met and, if applicable, the additional requirements for air transport of fissile material are met. After December 31, 2003, use of these packages for foreign shipments may continue under the additional requirement of multilateral approval. Changes in the packaging design or content that significantly affect safety require that the package meet current requirements of TS–R–1. Additionally, new fabrication of this type packaging must not be started after December 31, 2006. After this date, subsequent package designs must meet TS–R–1 package approval requirements.

Discussion. Industry representatives were concerned that IAEA is adopting a 2-year revision cycle to TS–R–1. From a design approval point of view, the regulatory requirements to be met may not be understood, and, as a new design requirement is approved, new revisions to the regulations could conceivably be developed. In other words, industry may always be playing catch up with the regulations.

Previously, the IAEA standards permitted a package to be manufactured for two revision cycles of the IAEA standard. Because the IAEA standard was revised every 10 years, this equated to a 20-year period. However, IAEA is now changing to a 2-year revision cycle. Retaining the two-cycle provision would now equate to a 4-year allowable manufacturing period. This issue is under review by IAEA. Therefore, the NRC is proposing to specify in existing § 71.13 when packages can no longer be manufactured or used, rather than using a ''two-revision cycle'' approach.

Additionally, a commenter expressed concern that beyond 2006, while packages could continue to be used under a valid CoC, no new packages could be manufactured based on any edition of Safety Series 6. Furthermore, all packages fabricated after December 31, 2006, would have to fully meet TS–R–1 requirements. The commenter stated that the licensing process for a package could be impacted. While NRC is aware and understands this concern, the proposed changes to § 71.13 are adequate to address the potential limitation on fabrication and use.

One commenter stated that the expense of designing and fabricating large Type B and spent fuel packages cannot be justified if the potential lifetime of the cask is limited to as short a period of time as 6 years. The commenter also believed that design and contents modifications should be allowed as specified in the current § 71.13(c). Conversely, one commenter stated that a 2-year updating cycle would force safety considerations in cask design up front, rather than continuing the attitude that casks be used as long as possible.

Another commenter urged NRC to include a grandfathering provision for continued transportation of packages, such as NRC-approved packages and DOT specification packages. The commenter explained that if NRC did not have a grandfathering provision, NRC would have to set aside hundreds of long-term disposal sites for the various Type B quantity containers currently in use at hospitals and research institutions.

Several commenters believed that grandfathering would allow the NRC to maintain an adequate level of safety for package designs. Some commenters stated that existing packages (even older ones) were safe and durable, because these packages must be maintained in accordance with the QA regulations of Part 71. Another commenter added that under current regulations, NRC may immediately recall a certification if a particular package created a safety concern.

One commenter voiced support for the proposal, assuming new regulations would continue to be more strict. Two commenters believed that while it is important for more stringent requirements to apply to all existing containers, relaxed provisions would effectively make newer containers less safe. In these instances, the commenters preferred that the older provisions remain in effect, instead of the newer, relaxed provisions. One commenter opposed grandfathering existing packages, and stated as a concern the unknown safety of older packages.

One commenter believed that NRC should incorporate specific requirements into the grandfathering provision to effectively maintain a good package program. The commenter explained that manufacturers of CoC containers or packages should be allowed to show, by calculations or testing, that upgraded standards and TS–R–1 have been achieved.

One commenter stated that the shorter cycle would put pressure on cask designers to make safety a more important design element.

In response to the question about the type and magnitude of package design changes that should be allowed for grandfathered packages before recertification is required, two commenters stated that TS–R–1 allows for a phase out of manufacturing of any packages that are not certified to the 1996 version of TS–R–1 by December 31, 2006. The commenters added that this provides a window for the design, testing, and certification of new packages, the reevaluation of existing packages to the 1996 specification, or a request for special certification.

The NRC recognizes that when the regulations change there is not necessarily an immediate need to discontinue use of packages that were approved under previous revisions of the regulations. Part 71 has included provisions that would allow previously-approved designs to be upgraded and to be evaluated to the newer regulatory standards. NRC believes that packages approved under the provisions of the 1967 edition of Safety Series No. 6, and which have not been updated to later editions, may lack safety enhancements which have been included in the packages approved under the provisions of the 1973, 1973 (as amended), 1985 and 1985 (as amended 1990) editions of Safety Series No. 6. Therefore, the NRC

believes that it is appropriate to begin a phased discontinuance of these earlier packages (1967-approved) to further improve transport safety.

The following enhanced safety features have been included in NRC-certified designs approved to these later standards. The NRC revised 10 CFR Part 71 in 1983 for compatibility with the provisions of the 1973 edition of Safety Series No. 6 to include:

1. The introduction of the A_1 and A_2 system. Before the 1973 edition of Safety Series No. 6, the regulations were based on Transport Groups. The A_1 and A_2 system was intended to use a consistent safety basis for package contents based on radiological protection in transportation under normal and accident conditions.

2. Standards for defining acceptable containment system performance. The 1973 edition of Safety Series No. 6 included for the first time activity limits for loss of radioactive contents from Type B packages under normal conditions of transport and under hypothetical accident conditions. The containment system performance requirements were tied to the A_1 and A_2 values, as described above.

3. The immersion test for Type A fissile material packages. The 1973 edition of Safety Series No. 6 required that the 15-meter (50-ft) water immersion test, previously required as a hypothetical accident test only for Type B packages, also be applied to fissile material packages. This immersion test is important in considering the degree of internal moderation (i.e., possible inleakage of water) in the criticality safety evaluation for fissile material packages in arrays.

4. Maximum normal operating pressure (MNOP). The 1973 edition of Safety Series No. 6 added a revised definition of MNOP. The definition for MNOP was included in Part 71 and specifically excluded consideration of package venting and active cooling systems.

5. Environmental test conditions. The 1973 edition of Safety Series No. 6 specified for the first time the high and low temperatures, pressures, and weights that should be considered when evaluating the package under normal and accident condition tests.

6. Quality Assurance (QA) requirements. The requirements to apply QA to the design, fabrication, and use of transportation packages were proposed in Part 71 in 1973. Although the IAEA regulations did not adopt QA requirements until the 1985 edition of Safety Series No. 6, NRC regulations required QA controls before IAEA adopted these provisions. QA program requirements are only imposed on packages approved for use after 1979. Packages approved under the 1973 edition of Safety Series No. 6 include QA in their design and fabrication, whereas, with a few exceptions (such as spent fuel casks), packages approved under earlier editions do not include QA program requirements.

The NRC draft RA indicates that adopting the grandfathering provisions for packagings approved under the 1985 editions of Safety Series No. 6 (known as ''-85'' packagings) and the associated expiration dates, is appropriate from a safety, regulatory, and cost perspective. From a regulatory standpoint, the proposed revisions would result in enhanced regulatory efficiency by bringing NRC's requirements in harmony with those contained in TS–R–1.

NRC does not currently have sufficient information to quantify the economic impacts of adopting this provision. The estimated costs to industry are not quantifiable due to a lack of sufficient data. However, industry is expected to bear costs associated with the need to redesign existing packages, address the reduction in availability of packages, and determine the years of service expected from the original design. Should NRC receive comments providing detailed information on the potential economic impacts to industry, the draft RA would be revised accordingly.

The proposed change would also result in implementation costs of approximately $3,500 to the NRC. The NRC would have to revise regulatory guides and NUREG-series documents to indicate which packages are covered by the ''grandfathering of older packages'' provision. Further, the proposed change could result in implementation and operation costs of approximately $1,000 to Agreement States if they adopt and implement parallel requirements. (The proposed change is not expected to affect implementation or operation costs of DOT.) Agreement States use regulatory guides and NUREG-series documents published by the NRC. Thus, Agreement States would only need to revise documents that they have specifically developed for their licensees (e.g., application materials). In terms of public health and safety, the existing and proposed requirements are believed to be equally protective. Thus, neither an increase nor a decrease in potential health and safety impacts is expected as a result of adopting the proposed administrative changes. Should the NRC become aware that a package or package design is unsafe, that package or design would be removed from service.

NRC Proposed Position. NRC supports the update to grandfathering in TS–R–1 and is proposing to revise Part 71 to discontinue authorization to use packages approved under the provisions of the 1967 edition of Safety Series No. 6. Specifically, NRC is proposing to make modifications to existing § 71.13 to phase out these types of packages. NRC realizes the impact this proposal may have on shipments using existing NRC-approved packages. Therefore, NRC proposes a 3-year transition period for the grandfathering provision on packages approved under the provisions of the 1967 edition of Safety Series No. 6. This period would provide industry the opportunity to phase out old packages and phase in new ones, or demonstrate that current requirements are met.

For transitional arrangements for newer designs, NRC is proposing to incorporate into § 71.13(c) the provisions for packagings approved under the 1985 editions of Safety Series No. 6 (known as ''–85'' packagings) and the associated expiration dates. Additionally, paragraph (e) of § 71.13 has been revised to specify the process by which previously-approved designs may be amended to include the ''–96'' designation.

In summary, the following conditions would apply: (1) Packages approved under NRC standards that are compatible with the provisions of the 1967 edition of Safety Series No. 6 may no longer be fabricated, but may be used for a 3-year period after adoption of a final rule; (2) Packages approved under NRC standards that are compatible with the provisions of the 1973 or 1973 (as amended) editions of Safety Series No. 6 may no longer be fabricated; however, the proposed rule would not impose any restrictions on the use of these packagings; (3) Packages approved under NRC standards that are compatible with the provisions of the 1985 or 1985 (as amended 1990) editions of Safety Series No. 6, and designated as ''–85'' in the identification number, may not be fabricated after December 31, 2006, but may continue to be used; (4) Package designs approved under any pre-1996 IAEA standards (i.e., packages with a ''–85'' or earlier identification number) may be resubmitted to the NRC for review against the current standards. If the package design described in the resubmitted application meets the current standards, the NRC may issue a new CoC for that package design with a ''–96'' designation.

Affected Sections. § 71.13.

Issue 9. Changes to Various Definitions

Background. The changes contemplated by NRC in this proposed rulemaking would require changes to various definitions in § 71.4 to provide internal consistency and compatibility with TS–R–1. The terms must be clearly defined so that they can be used to accurately communicate requirements to licensees. By modifying existing definitions and adding new definitions, the licensee would benefit through more effective understanding of the requirements of Part 71.

Discussion. Eight commenters submitted information on changes to various definitions in the proposed rule. One commenter stated that the definitions should be adopted to the extent the terms are used in the updated regulations. Another commenter urged NRC to be clear, consistent, and precise, particularly regarding the definitions of ''rupture,'' ''collapse,'' ''buckling,'' and ''inleakage.'' Two other commenters stated that the TS–R–1 definition identifies the specific types of packaging allowed for Class 7, and unless DOT revises its regulations, there will be a domestic conflict. Therefore, these commenters do not recommend this change. The commenters added that NRC should consider definitions that explain the differences among ''uniformly distributed,'' ''distributed throughout,'' and ''homogeneous.''

Another commenter stated that the existing regulation defines special form radioactive material that has been demonstrated to comply with specific tests. The commenter added that TS–R–1, paragraph 225, introduces the term ''low dispersible radioactive material,'' but fails to provide any guidance as to what characteristics qualify the material. Another commenter stated that the definition for ''low dispersible radioactive material'' should indicate that this does not refer to surface contamination, but rather activation of a solid material. This commenter also suggested adding the term ''sealed source'' to mean (for use of A1 values) encapsulated radioactive material that was designed and manufactured under a specific license and has been assigned a sealed source identification registry number.

One commenter stated that the proposed definitions of ''confinement system'' and ''package'' are indistinguishable for packages intended to transport fissile material. The commenter urged NRC to use only one term or to clearly distinguish between the two definitions. The commenter added that if the definition of ''confinement system'' is added, the term ''competent authority'' must also be defined, and if the definition of ''package'' is incorporated, definitions of ''excepted'' and ''industrial'' must be added. Another commenter stated that the confinement system definitions should be revised to include fuel assemblies, the PWR basket, and the shipping cask, because all three provide different levels and degrees of confinement.

The NRC draft RA indicates that revising Part 71 to modify existing and add new definitions is appropriate from a safety, regulatory, and cost perspective. The proposed changes would provide greater internal consistency and compatibility with TS–R–1. By modifying existing definitions and adding new definitions, licensees would benefit through a more effective understanding of the requirements of Part 71.

Specifically, industry will realize costs savings by benefitting from a more effective understanding of the requirements of Part 71. These costs savings are expected to be minimal, and are not quantifiable due to a lack of available data.

The proposed changes would result in approximately $3,500 in implementation costs to the NRC. The NRC would have to revise regulatory guides and NUREG–series documents to include the new or revised definitions of § 71.4. The proposed changes could affect implementation and operation costs of Agreement States because they would have to adopt the revision to the various definitions in § 71.4. (The proposed change is not expected to affect implementation or operation costs of DOT.) Because Agreement States use regulatory guides and NUREG-series documents published by the NRC, they would only need to revise documents that they have developed specifically for their licensees.

Additionally, as a means of improving use and understanding of Part 71, the following existing definitions from § 71.4 would be modified: A_1, A_2, and Low Specific Activity, specifically LSA–III. The definitions that are structured in § 71.4 are presented in italicized print as a means of distinguishing them from the corresponding text. The definition of LSA–III material would be modified to reference the testing provisions for LSA-III material found in § 71.77. Other definitions (e.g., Special form radioactive material) reference requirements within Part 71 that must be followed.

Lastly, within the Issues Paper, NRC posed the idea of adopting the following definitions from TS–R–1: Confinement System (TS–R–1, paragraph 209) and Quality Assurance (TS–R–1, paragraph 232). NRC is excluding the definition of Confinement system because it is included within the broader definition of Containment system. Further, NRC's use of Quality assurance is somewhat different from that of the IAEA, and NRC will retain the description of Quality assurance found in Subpart H.

NRC Proposed Position. The NRC is proposing to adopt the TS–R–1 definition of Criticality Safety Index (CSI). Additionally, the following definitions would be revised to improve their clarity: A_1, A_2, and LSA–III. Other changes to § 71.4 are proposed in separate issues.

Affected Sections. § 71.4.

Issue 10. Crush Test for Fissile Material Package Design

Background. In TS–R–1, the crush test requirements have been broadened to apply to fissile material package designs (regardless of package activity). Previously, IAEA Safety Series No. 6 and Part 71 have required the crush test for certain Type B packages. This broadened application was created in recognition that the crush environment was a potential accident force that should be protected against for both radiological safety purposes (packages containing more than 1,000 A_2 in normal form) and criticality safety purposes (fissile material package design).

Under requirements for packages containing fissile material, TS–R–1, paragraph 682(b), requires tests specified in paragraphs 719–724 followed by whichever of the following is the more limiting: (1) The drop test onto a bar as specified in paragraph 727(b) and either the crush test as indicated in paragraph 727(c) for packages having a mass not greater than 500 kg (1,100 lbs) and an overall density not greater than 1,000 kg/m^3 (62.4 lbs/ft) based on external dimensions, or the 9-meter (30-ft) drop test as defined in paragraph 727(a) for all other packages; or (2) the water immersion test as specified in paragraph 729.

Both the Safety Series No. 6, paragraph 548, and the current § 71.73 require the crush test for packages having a mass not greater than 500 kg (1,100 lbs), an overall density not greater than 1,000 kg/m^3 (62.4 lbs/ft) based on external dimensions, and radioactive contents greater than 1,000 A_2 not as special form radioactive material. Under TS–R–1, the criterion for radioactive contents greater than 1,000 A_2 has been eliminated for packages containing fissile material. The 1,000 A_2 criterion still applies to Type B packages and is also applied to the

IAEA newly created Type C package category.

Discussion. Several commenters provided feedback regarding crush test requirements for packages containing fissile material. A number of commenters urged NRC to keep the current regulations requiring the crush test and the free drop test. One commenter stated that the crush test was especially useful for large packages. Another commenter supported the test and stated that U.S. transportation activities should be consistent with IAEA transportation regulations. Similarly, one commenter stated that the testing sequence as required in TS–R–1 should be adopted to assure international uniformity. One commenter recommended removing the optional requirement of either a crush or a drop test, and replacing it with a requirement to conduct both tests.

One commenter requested that NRC improve the realism associated with crush tests. The commenter stated that the crush test should be a physical test rather than using a computer model simulating a test. Additionally, the test should use full-scale packages that are loaded with nonradioactive materials to provide improved test reliability. This commenter stated that crush tests should be included for all package sizes, and the test parameters should be increased to reflect real-world conditions.

A few commenters stated that the proposed requirement to use the free drop test or the crush test is problematic because the results of these tests are different and could require reanalysis of current packages.

One commenter stated that elimination of the 1,000 A_2 activity limit, without providing for flexibility in test sequencing, would be an unfair and costly burden. The commenter stated that Part 71 should be changed to conform to TS–R–1 in all aspects, or not be changed at all. Another commenter stated that the impact of the elimination of the 1,000 A_2 activity limit for fissile material packages having a mass not greater than 500 kg (1,100 lbs), and overall density not greater than 1,000 kg/m^3 (62.4 lbs/ft), based on external dimensions, is currently unknown. The commenter noted that shipping companies must use international standards established in TS–R–1 to allow international trade. Another commenter supported the removal of the 1,000 A_2 threshold for fissile packages on the grounds that A_2 levels are intended as an index of radiological hazard rather than criticality potential, and it is inconsistent with TS–R–1.

The NRC believes that full compliance with TS–R–1 requirements for fissile material packages would require changes to the hypothetical accident conditions test sequencing of § 71.73 and would require performance of the 9-meter (30-ft) free drop test or the crush test, but not both, as presently required by § 71.73. The TS–R–1 test requirements are essentially the same as those contained in Safety Series No. 6. In the previous NRC rulemaking for compatibility with Safety Series No. 6 (1985 edition), NRC staff addressed this difference in test requirements. In the June 8, 1988; 53 FR 21550, proposed rule, the NRC stated that: ''IAEA applies the crush test in place of the 9-meter drop test for the lightweight packages specified. In the absence of experience using the crush test, and because the crush test and drop test evaluate different features of a package, NRC is requiring both the crush test and the 9-meter drop test for the lightweight packages.'' Further, in the September 28, 1995; 60 FR 50248, final rule, the NRC stated: ''NRC is requiring both the crush test and drop test, for lightweight packages, to ensure that the package response to both crush test and drop forces is within applicable limits.''

The NRC draft RA indicates that revising Part 71 to adopt the TS–R–1 requirements for a crush test for fissile material package design, while maintaining the current testing sequence, is appropriate from a safety, regulatory, and cost perspective. Not adopting the requirement would result in an inconsistency between Part 71 requirements and TS–R–1, which could affect international shipments, and fissile material package designs would continue to not be evaluated for criticality safety against this potential accident condition. However, the NRC believes that further information on the impact of the TS–R–1 requirement for fissile material package testing is required. Imposing the crush test requirement on fissile material package designs may impact the industry through costs imposed to demonstrate compliance and may lead to the redesign of packages. Under present Part 71 standards and Safety Series No. 6, the 1,000 A_2 criterion, used to identify packages that must meet the crush test, essentially exempts all packages designed to contain uranium enriched to five percent or less (due to an unlimited A_2 value). For fissile material package designs, this would only apply to designs for plutonium contents. However, if TS–R–1 is adopted, only the weight and density criteria would apply to fissile uranium material packages, and packages that were previously exempted because of the 1,000 A_2 criterion would now require crush testing. The potential impact on the industry is unknown due to a lack of data on the number of packages shipped under § 71.55 where the 1,000 A_2 value allowed exemption from crush testing. However, to demonstrate compliance with the new regulations, industry may incur additional costs. These potential costs may stem from package redesign but, due to the lack of available data, these costs are not quantifiable. NRC would bear approximately $74,000 in costs. These costs result from the need to prepare documents and conduct other activities (such as publishing notices of rulemakings, holding public hearings, and responding to public comments) as a result of the action.

NRC Proposed Position. The NRC proposes to adopt the requirement for a crush test for fissile material packages, and eliminate the 1000 A_2 criterion for fissile material packages. However, because there is no new information that addresses concerns from the previous rulemaking regarding the difference in test requirements between Part 71 and Safety Series No. 6, the NRC proposes not to change the testing sequence nor to change the drop and crush test requirements in this revision.

Affected Sections. § 71.73.

Issue 11. Fissile Material Package Design for Transport by Aircraft

Background. TS–R–1 introduced new requirements for fissile material package designs that are intended to be transported aboard aircraft. TS–R–1 requires that shipped-by-air fissile material packages with quantities greater than excepted amounts (which would include all NRC-certified fissile packages) be subjected to an additional criticality evaluation. Specifically, TS–R–1, paragraph 680, requires that packages must remain subcritical, assuming reflection by 20 centimeters (8 inches) of water but no water inleakage (i.e., moderation) when subjected to the tests for Type C packages.[2] The specification of no water ingress is given because the objective of this requirement is protection from criticality events resulting from mechanical rearrangement of the

[2] The TS–R–1 imposition of Type C and LDM requirements (see Issue 6) was in recognition that severe aircraft accidents could result in forces exceeding those of the ''accident conditions of transport'' that are imposed on Type B and fissile package designs. Because the hypothetical accident conditions for Type B packages are the same as those applied to package designs for fissile material, there was also a need to consider how these more severe test conditions should be applied to fissile package designs transported by air.

geometry of the package (i.e., fast criticality). The provision also states that if a package takes credit for ''special features,'' this package can only be presented for air transport if it is shown that these features remain effective even under the Type C package test conditions followed by a water immersion test. ''Special features'' generally mean features that could prevent water inleakage (and therefore credit could be taken in criticality analyses) under the hypothetical accident conditions. Special features are permitted under current § 71.55(c).

TS–R–1, paragraph 680, requirements for packages to be transported by air are in addition to the normal condition and accident tests that the package must already meet. Thus:

Type A fissile package by air must:

(A) Withstand normal conditions of transport with respect to release, shielding, and maintaining subcriticality (single package and 5xN array [3]);

(B) Withstand accident condition tests with respect to maintaining subcriticality (single package and 2xN array); and

(C) Comply with TS–R–1, paragraph 680, with respect to maintaining subcriticality (single package);

Type B fissile package by air must:

(A) Withstand normal conditions of transport and Type B tests with respect to release, shielding, and maintaining subcriticality (single package and 5xN array/normal and 2xN array/accident); and

(B) Comply with TS–R–1, paragraph 680, with respect to maintaining subcriticality.

There are no provisions in TS–R–1 for ''grandfathering'' (Issue 8) fissile material package designs, which will be transported by air. TS–R–1, paragraphs 816 and 817, state that these packages are not allowed to be grandfathered. Consequently, all fissile package designs intended to be transported by aircraft would have to be evaluated before their use.

Discussion. Five commenters provided information regarding our proposal of the TS–R–1 provisions for fissile material package design for transport by aircraft. One commenter expressed concern about the comprehensibility of the regulations for Type B or below quantities of fissile materials. The commenter was aware that the IAEA went through efforts to try to clarify the requirements, but asserted that the regulations need to be understood consistently by the people who approve package designs for transport of fissile materials by air. The commenter stated that this is a critical issue for industry because the International Civil Aviation Organization (ICAO) has adopted TS–R–1 in 2001 and, therefore, shipments must meet the requirements in TS–R–1 for fissile materials. The commenter encouraged Federal agencies, including NRC and DOT, to push the concept of clarification of the rules and consider a streamlined approval process for designs of air transport of fissile material. Another commenter stated that TS–R–1 writers are working to develop a table that takes into consideration mass, enrichment, and moderation to define an acceptable limit for shipment by air.

One commenter asked when and in what situations the transportation of fissile level material by air would be required.

Two commenters supported the inclusion of these requirements as they are generally in parallel with those in place for surface mode accidents.

The NRC draft RA indicates that adopting TS–R–1 paragraph 680 for criticality evaluation (only applicable to air transport) is reasonable from a safety, regulatory, and cost perspective. Adopting this change would provide the NRC with the regulatory framework for approving package designs that will be used internationally. Shippers will be required to meet these requirements even if the NRC does not adopt them, because the ICAO has adopted regulations consistent with TS–R–1 on July 1, 2001. U.S. domestic air carriers require compliance with the ICAO regulations even for domestic shipments.

These changes are expected to benefit industry by eliminating the need for two different package designs. The amount of these savings, however, are not quantifiable due to a lack of data.

NRC Proposed Position. The NRC proposes to adopt TS–R–1, paragraph 680, Criticality evaluation, in a new proposed § 71.55(f) that only applies to air transport. Section 71.55 specifies the general package requirements for fissile materials, and the existing paragraphs of § 71.55 are unchanged. Because (1) the NRC is deferring adoption of the Type C packaging tests (see Issue 6); (2) TS–R–1, paragraph 680, references the Type C tests; and (3) paragraph 680 applies to more than Type C packages, only the salient text would be inserted into § 71.55(f), and would apply to domestic shipments.

Affected Sections. § 71.55.

D. NRC-Initiated Issues

Issue 12. Special Package Authorizations

Background. The basic concept for radioactive material transportation is that radioactive contents are placed in an authorized container, or packaging, and then shipped. The packaging, together with its contents, is called the package. In general, the transportation regulations in TS–R–1, 10 CFR Part 71, and Title 49 are based on the shipment of radioactive contents in a separate, authorized packaging. There are a few exceptions, however. For example, TS–R–1 provides that the least radioactive of the Low Specific Activity materials (LSA–I) and Surface Contaminated Objects (SCO–I) may be shipped unpackaged, provided certain conditions are met. Title 49 permits shipment of LSA–I materials in bulk, where the conveyance (e.g., truck or freight container) serves as the packaging.

In other cases involving larger quantities of radioactive material, the content to be shipped may itself be a container. A storage tank containing a radioactive residue is an example. It is not necessary for the shipper to place the tank within an authorized packaging, if the shipper demonstrates that the tank satisfies the requirements for the packaging. DOT and NRC have jointly provided guidance on such shipments (see ''Categorizing and Transporting Low Specific Activity Materials and Surface Contaminated Objects,'' NUREG–1608, RAMREG–003, July 1998).

As older nuclear facilities are decommissioned, DOT and NRC are being asked to approve the shipment of large components, including reactor vessels and steam generators. These components may contain significant quantities of radioactive material, but they are so large that it is not practical to fabricate authorized packagings for them. Because these components were not contemplated when the regulations were developed, the regulations do not specifically address them.

Basically, large components can be shipped under DOT regulations if the components meet the definition of Surface Contaminated Object (SCO) or Low Specific Activity (LSA) material (see 49 CFR 173.403 for SCO and LSA definitions). For example, steam generators that meet the SCO definition are exempt from Part 71 and are shipped under Title 49, following guidance provided in NRC Generic Letter 96–07 dated December 5, 1996. This method has been applied to several shipments of steam generators and small reactor

[3] N represents the maximum number of fissile material packages that can be shipped on a single conveyance.

vessels to the low level waste disposal facility at Barnwell, SC. NRC and DOT intend to continue employing this approach and method for steam generators and similar components that can be shipped under DOT regulations.

Large components that exceed the SCO and LSA definitions are subject to Part 71. An example is the Trojan reactor vessel. By letter dated March 31, 1997, Portland General Electric Company (PGE) requested approval of the Trojan Reactor Vessel Package (TRVP) (including internals) for transport to the disposal facility operated by U.S. Ecology on the Hanford Nuclear Reservation near Richland, Washington. The TRVP contained approximately 74 PBq (2 million Ci) in the form of activated metal and 5.7 TBq (155 Ci) in the form of internal surface contamination, was filled with low-density concrete and weighed approximately 900 metric tons (1,000 tons). Normally, large curie contents are required to be shipped in a Type B packaging, but the TRVP was too large and massive to be shipped within another packaging.

PGE acknowledged that the TRVP could not meet Type B regulations and applied for a Type B package CoC for the TRVP itself, either under § 71.41(c), ''Demonstration of compliance,'' or § 71.8, ''Specific exemptions.'' Section 71.41(c) provides that ''Environmental and test conditions different from those specified in §§ 71.71 and 71.73 may be approved by the Commission if the controls proposed to be exercised by the shipper are demonstrated to be adequate to provide equivalent safety of the shipment.'' Section 71.41(c) has been used to accommodate minor deviations in test environments (e.g., initial temperatures), and was not intended to be used to establish new test conditions for Type B packages. The use of this provision in the Trojan case would essentially have resulted in establishing new (and less rigorous) Type B test conditions that the Trojan vessel could meet. A CoC for a Type B package could then have been issued for Trojan, but the level of performance reflected in that Certificate would have been significantly different from that in other Type B Certificates. NRC decided against using § 71.41(c), and to use the § 71.8 exemption provision—the only other option available.

Section 71.8 provides that NRC may grant any exemption from the requirements of the regulations in Part 71 that it determines is authorized by law and will not endanger life or property nor the common defense and security. The exemption approach had three impacts on the TRVP review. First, the NRC's categorical exclusion from preparing an Environmental Assessment (EA) pursuant to the National Environmental Protection Act (NEPA) for package approvals (§ 51.22(c)(13)) does not apply to packages authorized under an exemption. Consequently, an EA of the proposed exemptions was required. Second, DOT's regulations that govern radioactive material shipments do not recognize packages approved via NRC exemption. PGE was therefore required to obtain an exemption from DOT regulations in 49 CFR Part 173 for the TRVP shipment. Third, use of the exemption option provided a mechanism for NRC to consider the operational and administrative controls, which were proposed by PGE to influence shipment risk factors. Considering the statements and representations contained in the application, as supplemented, and the conditions specified in the package approval, NRC concluded that the TRVP, as exempted, met the requirements of Part 71, and recommended that the Commission approve the exemptions and the TRVP shipment.

Currently, no regulatory provisions exist in Part 71 for dealing with nonstandard packages, other than the exemption provisions and § 71.41(c). The NRC's policy is to avoid the use of exemptions for recurring licensing actions. Therefore, as a lesson learned from the Trojan approval, the NRC staff identified large component package authorizations as an issue for consideration in this proposed rule.

Discussion. Numerous comments were received on the special package approvals issue in response to the Issues Paper, from the public meetings, and from NRC's website. One of the commenters supported the idea of creating a system for providing special package approvals without using the existing exemption requirements. This commenter noted that his agency found it very useful to realize that there are packages or materials outside the current scope of NRC regulations that still need to be transported as they cannot stay where they are. The commenter agreed that it is appropriate to have a method to address these issues.

A number of commenters did not support the development of a special package approvals regulation. These commenters believed the issue of special package approvals should be conducted on a case-by-case basis, using the current exemption process. One commenter noted that ''hot decommissioning'' and ''hot'' shipping introduce a new regimen, and therefore, the commenter believed that the only way for the NRC to proceed is with a case-by-case, very individual and specialized exemption or allowance, if at all. The commenter went on to say that the people who are on the first lines, the first responders and the emergency management coordinators at the local level, and the people who are in transport corridor communities have a right to information that a specialized process (i.e., an exemption process) would provide. The commenter stated that the concerns of the public who are in these transport corridor communities are not being given adequate weight in decision making, and the opportunities for discussion are too limited. Finally, this commenter stated that removing the exemption process for big, unusual shipments could set the stage for applying this concept to other types of materials to be exempted from testing and packaging requirements which the commenter believed would be a bad precedent.

Two commenters expressed concern over the definition of a ''special large object.'' One commenter stated that if special provisions are added, then the term ''large'' must be defined with respect to both size and weight. Another commenter requested that NRC consider revisions to Part 71 to address large objects in general, that would include reactor vessels.

Three commenters spoke to the issue of Type B quantities. The first commenter stated that there could be overlap between orphan sources and Type B quantities. This commenter recommended that Type B orphan sources be included in a separate rule from the special large packages. The second commenter would like to see collaboration between the NRC and DOT to address the possibility of initiating a program that would minimize package review costs of decommissioning Type B quantities of cobalt-60 and cesium-137. Two commenters stated that there have been cases where a Type B package has been damaged in a way that it will continue to secure and shield the sources, but does not meet compliance standards. The commenters noted that in these types of cases, a special arrangement certificate would be beneficial to allow transport of the damaged equipment for disposal.

Several commenters did not believe that NRC's use of the shipment of the Trojan reactor vessel was an adequate basis for determining whether or not to remove the requirement for exemptions for special packages and replace it with other provisions. One commenter noted that because the Trojan vessel was

shipped by barge, a lot of the risk of exposure that would normally be present in other transport modes was removed (e.g., a truck being caught in traffic). This commenter also stated that moving to a risk-informed decision making process for special package approvals may result in a situation where the public is ''informed to more risk while the industry is exposed to less regulation.'' Another commenter noted that if NRC is using the shipment of the Trojan reactor vessel as its baseline for determining whether to revise its regulations, care should be taken to limit the scope of this special approval to NRC's responsibilities and expertise. The commenter noted that as the Trojan approval process moved along, there was a difference of opinion as to the extent of NRC's evaluation of river and barging conditions, when in reality, these issues are the jurisdiction of the Coast Guard, and if the Coast Guard had approved the waterway and the conveyance, it should not be necessary for this information to be a part of an application to NRC subject to NRC review and approval. Other commenters disagreed. One commenter added that significant experience has already been gained in exempting the Trojan reactor vessel, a precedent has been established, and the possibility exists that the requirements placed on the shipment of the Trojan reactor vessel might have been more restrictive than might have been determined as necessary. Two commenters stated that the Trojan shipment review is a point of reference for the basis of other similar shipments, but that each case should still be assessed on its own merits.

A number of commenters raised specific issues that NRC should consider when deciding whether to propose a special package approval process and how that process should be defined. Two commenters noted that the system has been defined as to how these materials should be moved and what kind of information needs to be provided to the regulators to move the materials. These commenters further noted that any change to Part 71, with respect to these special shipments, needs to be specific to those items that are going to be regulated under the MOU between the NRC and DOT. The two commenters added that the majority of those items that get moved are large components and would fall under the DOT's jurisdiction under the MOU. Thus, DOT would regulate items like steam generators and demineralizers and pressurizers, all of which are pieces and parts of reactors that are being decommissioned. NRC would regulate items like reactor pressure vessels (e.g., the Trojan reactor pressure vessel).

One commenter did not support the adoption of an analog of the IAEA special arrangements provisions in Part 71. The commenter did not support the adoption of this type of provision in Part 71 because the IAEA special arrangements were specifically designed for movement internationally, whereas most of these items would be moved domestically.

One commenter provided input on the specific issue of what additional determinations should be included in an application for a special package approval. The commenter noted that a precedent has already been established with the requirement that a transportation plan be provided with the exemption requests. The transportation plan contains safety features that would be substituted for the current codified requirements that would provide an equivalent order of safety, considerations of the entire safety system versus independent components of safety, emergency response plans, and risk-informed considerations.

The NRC processing of one-time exemptions for nonstandard packages, such as the Trojan vessel, represents expenditure of considerable staff resources. Once the application for exemption is received, the staff spends a significant amount of time reviewing the application and preparing an EA. The Commission itself has been involved in the approval of these actions. Rather than exempting nonstandard packages from regulations, as was necessary for Trojan, the staff is proposing that regulatory requirements be added to Part 71 which would address nonstandard packages. These special packages are likely to increase in number as a result of future decommissioning activities.

The NRC is proposing a regulatory mechanism to address large component shipments. In this regard, NRC has considered TS–R–1, paragraph 312, entitled Special Arrangement:

> Consignments for which conformity with the other provisions of these regulations is impracticable shall not be transported except under special arrangement. Provided the competent authority is satisfied that conformity with the other provisions of the regulations is impracticable and that the requisite standards of safety established by these regulations have been demonstrated through means alternative to the other provisions, the competent authority may approve special arrangement transport operations for single or a planned series of multiple consignments. The overall level of safety in transport shall at least be equivalent to that which would be provided if all the applicable requirements had been met. For international consignments of this type, multilateral approval shall be required.

The Special Arrangement paragraph is intended to provide competent authorities (DOT in the U.S.) the authority to approve shipments that don't completely conform to the transportation safety standards, provided the overall level of safety established by the regulations is maintained. DOT consults with NRC regarding the approvals for shipment of packages containing larger quantities of radioactive material and/or fissile materials. NRC is proposing to add this provision to § 71.41.

The NRC draft RA indicates that adopting the special package authorization requirements proposed for incorporation into Part 71 is appropriate from a safety, regulatory, and cost perspective. The proposed action would result in enhanced regulatory efficiency by standardizing the requirements to provide greater regulatory certainty and clarity, and would ensure consistent treatment among licensees requesting authorization for shipment of special packages. This increase in regulatory efficiency, however, would depend in part on modifications to DOT's regulations to recognize NRC special package exemptions. Further, NRC experience in handling the one-time exemption(s) during the transition period would be used in crafting the new requirements. As a result, applications for one-time exemptions would be eliminated, resulting in savings in licensee staff resources and NRC staff resources. Because the new section is expected to be better streamlined for handling these nonstandard packages, considerable savings would be realized, both in NRC and licensee staff time. These expected NRC savings are estimated to be approximately $500,000. Special package shipments are likely to increase regardless of the outcome of this rulemaking, as a result of future decommissioning activities. The justification for authorizing special packages for shipment is a decreased risk of radiation exposure to the public and workers as opposed to the shipment alternatives. NRC believes that standardizing the method for reviewing these packages would provide adequate review without imposing unnecessary administrative burdens on NRC staff associated with the processing of exemption-based reviews.

Industry may have costs associated with additional preparation of health and safety information for shipment of special packages. But, there may also be some inherent cost savings to industry

with respect to preparing health and safety information. On the balance between the costs anticipated with developing an application for NRC approval and the savings expected from using an established process, the net effect on industry is expected to be negligible.

NRC Proposed Position. NRC proposes a special package authorization that would apply only in limited circumstances, and only to one-time shipments of large components. Further, any such special package authorization would be issued on a case-by-case basis, and would require the applicant to demonstrate that the proposed shipment would not endanger life or property nor the common defense and security, following the basic process used by applicants to obtain nonspecial package authorizations from NRC.

NRC proposes to adopt a provision that is analogous to TS–R–1, paragraph 312, for Part 71 with respect to the approval of large component packages. The applicant would need to provide reasonable assurance that the special package, considering operational procedures and administrative controls employed during the shipment, would not encounter conditions beyond those for which it had been analyzed and demonstrated to provide protection. NRC would review applications for large component special package authorizations. Approval would be based on a staff determination that the applicant met the requirements of Subpart D. If approved, the NRC would issue a CoC or other approval (i.e., special package authorization letter).

NRC would consult with DOT on making the determinations required to issue an NRC special package authorization. The efficiency of the NRC special package process, in part, depends on a modification by DOT of its regulations to recognize NRC special package authorizations, so that a DOT exemption would not be required for use of the NRC authorization. DOT is proposing this change in its companion TS–R–1 compatibility rulemaking.

Affected Sections. § 71.41.

Issue 13. Expansion of Part 71 Quality Assurance Requirements to Certificate of Compliance (CoC) Holders

Background. The Commission recently issued a final rule to expand the QA provisions of Part 72, Subpart G, to specifically include certificate holders and applicants for a CoC (see 64 FR 56114; October 15, 1999). In development of the proposed rule for Part 72, the NRC staff submitted a rulemaking plan to the Commission in SECY–97–214.[4] In a Staff Requirements Memorandum (SRM) to SECY–97–214, the Commission approved the staff's rulemaking plan and directed the staff to also consider whether conforming changes to the QA regulations in Part 71 would be necessary because of the existence of dual-purpose cask designs. In a memorandum from the Executive Director for Operations to the Commission, dated December 3, 1997, the NRC staff indicated that expansion of the Part 71 QA provisions to include certificate holders and applicants for a CoC would be made as part of the rulemaking to conform Part 71 to IAEA Standard TS–R–1. Furthermore, in the final rule expanding QA regulations in Part 72, Subpart G, the Commission did not include contractors or subcontractors (e.g., fabricators) within the scope of the revised Part 72, Subpart G. The Commission took this action in response to comments on the associated proposed rule. In the response to Comments 3 and 9 in the final Part 72 rule, the Commission indicated that Part 72 licensees, certificate holders, and applicants for a CoC are responsible for assuring that their contractors and subcontractors (e.g., fabricators) are implementing adequate QA programs. Similarly, Part 71 licensees, certificate holders, and applicants for a CoC are responsible under § 71.115 for assuring that their contractors and subcontractors (e.g., fabricators) are implementing adequate QA programs.

Under Part 71, the NRC reviews and approves applications for Type B and fissile material packages for the transport of radioactive material. The NRC's approval of a package is documented in a CoC. Applicants for a CoC are currently required by § 71.37 to describe their QA program for the design, fabrication, assembly, testing, maintenance, repair, modification, and use of the proposed package. Further, existing § 71.101(a) describes QA requirements that apply to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packagings that are important to safety. Type B packages are intended to transport radioactive material that contains quantities of radionuclides greater than the A_1 or A_2 limits for each radionuclide (see Appendix A to Part 71 for examples of A_1 or A_2 limits). Fissile material packages are intended to transport fissile material in quantities greater than the Part 71, Subpart C, general license limits for fissile material (e.g., existing §§ 71.18, 71.20, 71.22, and 71.24).

Although CoCs are legally binding documents, certificate holders or applicants for a CoC and their contractors and subcontractors have not clearly been brought into the scope of Part 71 requirements. This is because the terms ''certificate holder'' and ''applicant for a certificate of compliance'' do not appear in Part 71, Subpart H; rather, Subpart H only mentions ''licensee'' in these regulations. Consequently, the NRC has not had a clear basis to cite certificate holders and applicants for a CoC for violations of Part 71 requirements in the same way it has licensees.

The NRC Enforcement Policy[5] and its implementing program was established to support the NRC's overall safety mission in protecting public health and safety and the environment. Consistent with this purpose, enforcement actions are used as a deterrent to emphasize the importance of compliance with requirements and to encourage prompt identification and comprehensive correction of the violations. Enforcement sanctions consist of Notices of Violation (NOVs), civil penalties, and orders of various types. In addition to formal enforcement actions, the NRC also uses related administrative actions such as Notices of Nonconformance (NONs), Confirmatory Action Letters, and Demands for Information to supplement its enforcement program. The NRC expects licensees, certificate holders, and applicants for a CoC to adhere to any obligations and commitments that result from these actions and would not hesitate to issue appropriate orders to ensure that these obligations and commitments are met. The nature and extent of the enforcement action are intended to reflect the seriousness of the violation involved. An NOV is a written notice setting forth one or more violations of a legally binding requirement.

When the NRC has identified a failure to comply with Part 71 QA requirements by certificate holders or applicants for a CoC, it has issued an NON rather than an NOV. Although an NON and an NOV appear to be similar, the Commission prefers the issuance of an NOV because: (1) The issuance of an NOV effectively conveys to both the person violating the requirement and the public that a violation of a legally binding

[4] SECY–97–214, ''Changes to 10 CFR Part 72, Expand Applicability to Include Certificate Holders and Applicants and Their Contractors and Subcontractors,'' dated September 24, 1997.

[5] NUREG–1600, ''General Statement of Policy and Procedures for NRC Enforcement Actions,'' dated May 2000.

requirement has occurred; (2) the use of graduated severity levels associated with an NOV allows the NRC to effectively convey to both the person violating the requirement and the public a clearer perspective on the safety and regulatory significance of the violation; and (3) violation of a regulation reflects the NRC's conclusion that potential risk to public health and safety could exist. Therefore, the NRC believes that limiting the available enforcement sanctions to administrative actions is insufficient to address the performance problems observed in industry.

Discussion. Sixteen commenters provided comments regarding the possible expansion of QA requirements to holders of, and applicants for, a CoC. Of these, three supported expanding the QA requirements. Two commenters stated that the cask design and fabricating industry should be allowed flexibility to make design changes to the casks that would not impact safety. One of the commenters stated that cask designers and fabricators should be held responsible as are parties on the nuclear power reactor side.

Four commenters did not support the overall proposed change to expand the QA requirements of Part 71. One commenter stated that it is the responsibility of the purchaser, user, or licensee of the cask or shipping container to ensure the container's QA, and therefore, NRC already has enforcement authority over that particular container. Two commenters stated that extending the responsibility to the fabricator or certificate holder would encourage fabricators to get out of business because of the regulatory and paper burden of the proposed provision. Another commenter stated that there is confusion between what is in the current regulations and what is in the proposed regulations. Another commenter stated that NRC could be regulating packages for which NRC is not responsible under the MOU between the NRC and the DOT. A commenter stated that NRC currently has adequate QA control on the Part 71 packages under Subpart H. The commenters did not believe that issuing an NOV instead of an NON would result in additional compliance.

Several commenters noted the need for consistency in the QA provisions between Parts 71 and 72, which should be maintained for dual purpose casks used for storage and transportation of spent nuclear fuel and high-level radioactive waste. Additionally, one commenter noted that a distinction has never been established between Part 71 and Part 72 packages used to transport/store spent fuel and the Part 71 packages used to transport sealed radioactive sources. The commenter suggested that ''Part 50 reactor licensees be specifically exempted from participation in nuclear power specific QA activities.''

Representatives of DOT and DOE questioned whether this provision would apply to Type A packages. The NRC intends that this proposed change would apply only to NRC certificate holders and applicants for a CoC and only for package designs that are regulated by NRC (e.g., Type B or fissile packages).

The principal changes to Subpart H would involve adding the terms ''certificate holder'' and ''applicant for a CoC'' to indicate that these persons are also covered by the section, although in some cases, only ''certificate holder'' would be added, because an applicant for a CoC would not be expected to accomplish these specific activities. Additional conforming changes would be made to various sections in Part 71 to ensure greater consistency between Part 71 and Part 72.

The NRC draft RA indicates that expanding the QA provisions of Part 71, Subpart H, to certificate holders and applicants for a CoC is appropriate from a safety, regulatory, and cost perspective. Adopting these requirements would ensure that the regulatory scheme of Part 71 would remain more consistent with other NRC regulations in that certificate holders and applicants for a CoC would be responsible for the behavior of their contractors and subcontractors. Also, because this action would be limited to certificate holders and applicants for a CoC, it may not be as likely to be challenged as an expansion of NRC authority. Inclusion of certificate holders and applicants for a CoC would make it possible for NRC to issue NOVs and orders, if appropriate, for violation to the regulatory requirements; this would allow the NRC to conduct its business of protecting public health and safety more efficiently and effectively. This proposed rule would not authorize the NRC to issue civil penalties to Part 71 certificate holders or applicants for a CoC who are found to be in violation of regulatory requirements. Alternatively, contractors and subcontractors of licensees, certificate holders, and applicants do have responsibility for safety, and omitting them from Part 71 would continue the present difficulty that NRC has encountered in reaching these persons with its enforcement tools. Certificate holders and applicants for a CoC would incur costs associated with understanding and implementing the new regulations, as well as in preparing and submitting reports similar to those described in SECY 99–174. SECY 99–174 states that ''Additional requirements for recordkeeping and reporting for certificate holders are needed to include records required to be kept as a condition of the CoC. This will provide an enforcement basis equivalent to the recordkeeping and reporting regulations for licensees.'' These costs are estimated to be approximately $239,000 per year for the certificate holders and applicants for a CoC. NRC would incur costs associated with monitoring certificate holders and applicants for a CoC and maintaining and reviewing the records for certificate holder submittals. These costs are estimated to be approximately $48,000 per year. By specifically listing certificate holders and applicants for a CoC in Part 71, inspection deficiencies noted by NRC might result in an NOV. This authority would allow NRC to issue orders or take other enforcement actions (except civil penalties) necessary to ensure that certificate holders and applicants for a CoC comply with Part 71 requirements, similar to NRC enforcement actions in other program areas. However, this benefit is difficult to quantify and is estimated to be small.

The NRC is proposing to expand the QA provisions of Part 71, Subpart H, to specifically include certificate holders and applicants for a CoC. This expansion is necessary to enhance NRC's ability to enforce nonconformance by the certificate holders and applicants for a CoC. The NRC is also proposing to add a new section (§ 71.9) on employee protection to Part 71. Currently, regulations on employee protection are contained in the individual parts under which the NRC issued a specific license. Consequently, this regulation was not deemed necessary for a Part 71 general licensee. However, the equivalent requirement for certificate holders or applicants for a CoC does not exist. The NRC believes that employee protection regulations should be added for the employees of certificate holders and applicants for a CoC to provide greater regulatory equivalency between Part 71 licensees and certificate holders. Therefore, the NRC would add a requirement on employee protection to Part 71.

NRC Proposed Position. The NRC is proposing to expand the QA provisions of Part 71, Subpart H, to specifically include certificate holders and applicants for a CoC.

In addition to the changes to Subpart H, conforming changes would also be made to: § 71.0, ''Purpose and scope''; § 71.1, ''Communications and records'';

§ 71.6, ''Information collection requirements: OMB approval''; § 71.7, ''Completeness and accuracy of information''; § 71.91, ''Records''; § 71.93, ''Inspection and tests''; and § 71.100, ''Criminal penalties.'' Additionally, § 71.11 would be redesignated as § 71.8; and a new § 71.9, ''Employee protection,'' would be added.

Affected Sections. §§ 71.0, 71.1, 71.6, 71.7, 71.8 , 71.9, 71.91, 71.93, 71.100, and 71.101 through 71.137.

Issue 14. Adoption of American Society of Mechanical Engineers (ASME) Code

Background. NRC considered the adoption of the American Society of Mechanical Engineers (ASME), Boiler and Pressure Vessel Code (B&PV) Code, Section III, Division 3, for two reasons. First, previous NRC inspections at vendor and fabricator shops (for fabrication of spent fuel storage canisters and transportation casks) identified quality control (QC) and QA problems. Some of these problems would have been prevented with improved QA programs, and may have been prevented had fabrication occurred under more prescriptive requirements such as the ASME Code requirements. Second, Public Law 104–113, ''National Technology Transfer and Advancement Act,'' enacted in 1996, requires that Federal agencies use, as appropriate, consensus standards (e.g., the ASME B&PV Code), except when there are justified reasons for not doing so.

Currently, no ASME Code requirements exist in Part 71 for fabrication/construction of spent fuel transportation packages.

Discussion. NRC received numerous comments regarding the adoption of the ASME Code. Four commenters stated they favored adoption of the ASME Code. One commenter favored using ASME codes for all components used in the containment boundary of all products that are used in transportation and storage of radioactive materials. This commenter also supported an explanatory guideline in the ASME Code that speaks to the subject of categorization of materials, whereby all manufacturers are using the same criteria. Another commenter stated that using ASME standards would improve current problems with casks and the current lack of QA. One commenter stated that some benefits of a third party authorized nuclear inspector (ANI) would accrue to industry. These benefits are that common standards would decrease complexity and interpretation, lower cost, and increase safety.

Eight commenters stated concerns or disapproval of the adoption of the ASME Code. One commenter was concerned with the adoption of the guidelines before a full review of the effects on transportation. Another commenter stated concern over adopting voluntary standards into regulations. Specifically, this concern was directed at the inconsistency between industry standards and regulations. Similarly, another commenter noted that changes within ASME might occur quickly, and it would be difficult to follow these changes. One commenter recommended that incorporation of the ASME Code by reference is the appropriate regulatory mechanism, following the precedent set by § 50.55(a) for the ASME Code, Section III, Division 1. Several commenters recommended that NRC place industry standards in regulatory guides, which would allow for simpler updating, recognize that other methods of demonstrating compliance are available, and satisfy the Congressional mandate to consider the use of consensus standards. One commenter stated a concern about the enforceability of the standard if it is not placed in the regulations. Conversely, another commenter noted that the regulatory burden is significantly increased when voluntary standards are changed to regulations, and compliance may not always be practical or accomplished.

Other commenters were concerned about the widespread impact of the adoption. One commenter stated that there is no technical justification for adoption of the ASME Code, and it would have significant adverse impact on the ability of the U.S. Navy to refuel and defuel the U.S. nuclear powered warships. Another commenter stated that overseas market impacts need to be considered in the rulemaking. Another commenter stated that when an applicant commits to certain standards in his or her safety requirements during the license approval process, it becomes a license condition, and NRC can enforce it.

One commenter stated that if the ASME Code is adopted, the development of it and the information involved must be publicly available. Two commenters specifically asked if the proposed change applies to all packages, dual-purpose spent fuel packages, or to all CoC holders. Another commenter questioned how, or whether, the requirement will change if the industry standard changes in the future.

During the early period of spent fuel storage and transportation cask fabrication, NRC inspection staff consistently identified QC and QA problems at the vendor/fabricator facilities. At that time, NRC believed that these problems might have been prevented had fabrication occurred under ASME Code requirements. Therefore, there was an impetus to place consideration of the ASME Code requirements in the Part 71 rulemaking. However, since then, due to increased attention by the NRC and industry, the overall frequency and significance of QA and QC problems at fabricators and vendors have decreased.

With respect to conformance to Public Law 104–113, the ASME issued a consensus standard in May 1997, entitled: ''Containment Systems and Transport Packages for Spent Fuel and High Level Radioactive Waste,'' ASME B&PV Code, Section III, Division 3. The ASME Code requires the presence of an ANI during construction to ensure that the ASME Code requirements are met, and the stamping of components (i.e., the transportation cask's containment) constructed to the ASME Code. NRC staff participated, and continues to participate, in the ASME subcommittee that developed the ASME Code requirements. It is the NRC staff's understanding, through participation in the subcommittee, that the ASME Code document is undergoing extensive review and modification and that a major revision will be issued. Therefore, NRC staff believes that inclusion of the ASME Code in Part 71 is not appropriate at this time.

Public Law 104–113 requires that Federal agencies use consensus standards in lieu of government-unique standards, if this use is not impractical or inconsistent with other existing laws. Because a major revision to the ASME Code is forthcoming and because the changes in that revision are not yet available for staff and stakeholder review, the NRC staff considers it an imprudent use of NRC and stakeholder resources to initiate rulemaking on the current ASME Code revision only to have the ASME Code requirements change during the Part 71 rulemaking. After the ASME Code revision is issued, the NRC staff can then consider its incorporation through the rulemaking process, or consider adopting and accepting the ASME Code as an acceptable method for complying with NRC requirements through endorsement in regulatory guidance.

The NRC draft RA indicates that not adopting the ASME Code requirements in Part 71 is appropriate from a safety, regulatory, and cost perspective. While NRC resources would be conserved by not adopting the ASME Code, the proposed action would retain the current status. However, the proposed

action would result in no benefits or negative impacts on industry.

After consideration of the public comments and the NRC recently learning of the extensive review and revision of the ASME Code, the staff recommends not to incorporate the ASME Code, Section III, Division 3, requirements into Part 71. However, adoption of the ASME Code into Part 71 will be considered by the NRC staff in a future rulemaking or guidance document.

NRC Proposed Position. The NRC staff recommends not incorporating the ASME Code, Section III, Division 3 requirements into Part 71.

Affected Sections. None (not adopted).

Issue 15. Change Authority for Dual-Purpose Package Certificate Holders

Background: The Commission recently approved a final rule to expand the provisions of § 72.48, ''Changes, Tests, and Experiments,'' to include Part 72 certificate holders (64 FR 53582; October 4, 1999). Part 72 certificate holders are allowed under the amended § 72.48 to make certain changes to a spent fuel storage cask's design or procedures used with the storage cask and to conduct tests and experiments, without prior NRC review and approval. Part 71 does not contain any similar provisions to permit a certificate holder to change the design of a Part 71 transportation package, without prior NRC review and approval. The NRC has issued separate CoCs under Parts 71 and 72 for dual-purpose spent fuel casks and transportation packages (i.e., a container intended for both the storage and transportation of spent fuel). This has created the situation where an entity holding both a Part 71 and Part 72 CoC would be allowed under Part 72 to make certain changes to the design of a dual-purpose cask, e.g., changes that affected a component or design feature that has a storage function, without obtaining prior NRC approval. However, the same entity would not be allowed under Part 71 to make changes to the design of this same dual-purpose cask (package), e.g., changes that affect the same component or design feature, if that component or feature also has a transportation function, without obtaining prior NRC approval, even when the same physical component and change is involved (i.e., the change involves a component that has both storage and transportation functions).

In SECY–99–130 [6] and SECY–99–054,[7] NRC indicated that comments had been received on the § 72.48 proposed rule (63 FR 56098; October 21, 1998) that requested similar authority be created in Part 71, particularly with respect to dual-purpose casks. In SECY–99–054, NRC staff recommended that an authority similar to § 72.48 be created for spent fuel transportation packages intended for domestic use only. NRC staff also recommended that this authority be limited to Parts 50 and 72 licensees shipping spent fuel and the Part 71 certificate holder. NRC indicated that providing change authority under Part 71 would be addressed in the current rulemaking. The Commission directed the staff to implement recommendations contained in SECY–99–130 and SECY–99–054, in an SRM dated June 22, 1999.

NRC also identified other supporting changes to Part 71 that would be required to ensure consistency with the process contained in § 72.48. These changes include: (1) the use of common terminology such as ''changes to the cask design, as described in the final safety analysis report'' (FSAR); (2) a process for requesting amendments to a CoC; (3) periodic updates by certificate holders to the FSAR for a transportation package to ensure that an accurate ''licensing'' basis is available when future proposed changes are evaluated; and (4) a requirement that licensees possess a copy of the FSAR as well as the CoC before making a shipment.

NRC believes that the current IAEA standard TS-R–1 does not contain any equivalent provisions for changing a transportation package's design, without prior review by the agency that certified the design. NRC is the reviewing agency for Type B and fissile material package approvals. Therefore, any application of ''change authority'' to Part 71 CoCs would only apply to packages intended for the domestic transport of spent fuel.

Discussion. The NRC has received 48 public comments on this issue in response to the issue paper, public meetings, and the website. Industry representatives and certain members of the public support the issue. Public interest organizations, State representatives, and other members of the public generally oppose the issue. The DOE also opposes this issue. Groups in favor of this issue pointed to similar provisions in Parts 50 and 72 where such changes have been safely made. Groups opposed to this issue believe that all changes to a transport package's design should be submitted to the NRC for prior review and approval. These commenters believed this is necessary because transportation packages are on the public roadways and railways, hence the public believes there is more immediate and greater exposure to the radioactive contents of the package in an accident. The following is a more detailed description of these comments.

Seven commenters supported the effort to expand the provisions contained in § 72.48 to include Part 71 certificate holders. Two commenters also requested that NRC expand the authority for all packages, not just dual-purpose spent nuclear fuel packages.

Three commenters requested that NRC be consistent and revoke the change, test, and experiment authority for Part 72 certificate holders. One commenter opposed allowing the ability to make any changes to casks without prior NRC approval. Similarly, one commenter sought assurance that NRC would continue to be able to monitor industry performance (i.e., maintain regulatory oversight capability), and be able to undo or revise changes or force amendments when necessary.

One commenter, opposed to the expansion of authority, referenced a Government Accounting Office (GAO) report that highlighted problems with transportation casks fabricated by Westinghouse, claiming that 20 out of 40 casks had been found to be defective. Another commenter was opposed to any action, such as moving to performance- or risk-based management, that would increase the level and type of public risk.

Another commenter stated that he does not support allowing change authority because the definition of ''minimal'' has historically been ill-defined. This commenter also expressed his belief that Issue 15 (change authorization issue), as currently proposed, would not result in Part 71 conforming with TS-R–1. The commenter cited as evidence the text in the Issues Paper that states, ''the current IAEA standard ST–1 does not contain any equivalent provisions for changing a transportation package's design, without prior review by the competent authority.''

Most commenters expressed interest in receiving additional information from NRC about what changes might be allowable, and clarification that these allowable changes would only be for activities not important to safety (e.g., switching to nonreactive paints). One

[6] SECY–99–130; May 12, 1999, ''Final Rule—Revisions to Requirements of 10 CFR Parts 50 and 72 Concerning Changes, Tests, and Experiments.''

[7] SECY–99–054; February 22, 1999, ''Plans for Final Rule—Revisions to Requirements of 10 CFR Parts 50, 52, and 72 Concerning Changes, Tests, and Experiments.''

commenter also suggested that NRC and DOT be careful in determining allowable, nonsafety changes because with the effort to lengthen the certificate revalidation cycle, it is conceivable that these changes would just be rolled into the new certification without review. This commenter also questioned how NRC plans to address the issue of conformity with other nations' package requirements and certificates.

NRC believes that the capability to make minor changes to a transportation package is similar to the capability to make minor changes to a reactor facility, to a spent fuel storage facility, or a spent fuel storage cask design. The Commission has recently issued a final rule which authorized Part 72 certificate holders to make minor changes to a spent fuel storage cask's design. Therefore, NRC believes that extending this authority to Part 71 packages is consistent with previous Commission actions.

The current regulatory structure of Part 71 requires that all design changes to a transportation package, which would change the CoC or included drawings, be submitted to the NRC for prior review and approval. However, a package user (i.e., a Part 71 general licensee) is not currently required to obtain a copy of the safety analysis report (SAR) and understand it before shipping radioactive material. Rather, the licensee is only required to obtain a copy of the CoC and any referenced documents, determine that the package is properly configured for shipment (i.e., meets the requirements of §§ 71.85 and 71.87), determine that the intended radioactive contents are within the conditions of the CoC, implement any procedure required by the CoC, and accomplish these activities under an NRC-approved QA program (in accordance with Part 71, Subpart H). Consequently, a licensee is not required to understand the technical bases of the Part 71 regulations on normal conditions of transport, hypothetical accident conditions, and criticality control (i.e., §§ 71.71, 71.73, and 71.55, respectively), before the licensee can use the package to transport radioactive material. Therefore, NRC staff believes that a significant increase in burden would be imposed on licensees to understand these technical bases, if they were permitted to make changes under a ''change authority'' regulation.

NRC also notes that Part 71 does not contain some of the regulatory foundations which support the recent revision to § 72.48. For example, under § 72.48, a licensee is required to evaluate proposed changes to the cask design against the FSAR (as updated), and to periodically incorporate these changes into the FSAR to ensure that an accurate licensing basis is maintained for use in evaluating future proposed changes. Additionally, a Part 71 licensee need not own the package it is using to transport radioactive material. Instead, the licensee is considered a ''registered user'' of the package. This second circumstance, when coupled with a Part 71 change authority, might create a situation in which one licensee could make an authorized change to a package, without prior NRC approval, transfer that package to another registered user, without forwarding all change summaries to the next user, who would then be unable to verify or recognize that the package is in conformance with the CoC (i.e., acceptable for use under the requirements of Subpart G (e.g., § 71.87)).

The design drawings for a transportation package are directly incorporated by reference into the Part 71 CoC, whereas the design drawings for a spent fuel storage cask are contained in the FSAR. While changes to a design (as described in the FSAR) are permitted, changes to the CoC (or any drawings incorporated into the CoC by reference) would not be permitted. As a consequence, these referenced drawings limit the population of potential changes that a licensee or certificate holder could make under a Part 71 change authority equivalent to § 72.48.

Based upon review of the potential impacts, NRC believes that adding the necessary regulatory requirements (i.e., foundations) to Part 71 to support a change authority equivalent to § 72.48 would unnecessarily increase the burden on all licensees without providing a corresponding benefit. Providing this change authority would also increase the complexity of the Part 71 regulations.

The NRC believes the issue of inconsistent change authority between Parts 71 and 72 for a dual-purpose spent fuel package should be resolved. Performance of Parts 50 and 72 licensees and the Part 76 certificate holder in implementing the change processes of Parts 50, 72, and 76 has demonstrated that these types of changes can be made safely, without prior NRC approval. However, NRC staff also believes that the scope of this authority should be limited to dual-purpose packages, rather than all NRC-certified spent fuel packages, and limited to only the certificate holders.

Accordingly, the NRC staff considers the best approach in resolving these conflicts is through the use of a parallel regulatory structure in Part 71. While the NRC staff would retain the current process for existing transportation packages, a new process for approving dual-purpose transportation packages would be added to Part 71. Authority to make changes to a dual-purpose package design would be provided, and new requirements on the issuance and review of an SAR would also be provided. These new regulations would only apply to Type B(DP) dual-purpose packages intended for the domestic transportation and storage of spent fuel. Because IAEA standard TS–R–1 does not contain any provisions to permit a certificate holder to make changes to the design of a package without prior review and approval by the ''competent authority'' that issued the certificate, a Type B(DP) package could not be approved for international use.

To provide a clear distinction between these new and existing packages, the new packages would be classified as Type B(DP), would have a unique ''B(DP)'' identifier, and for reasons discussed below, these packages would not be required to meet TS–R–1 standards and could not be used in international transport. For a Type B(DP) package, requirements on submitting an FSAR, periodically updating the FSAR, applying for an amendment to the CoC, and changing the design of the dual-purpose package, without prior NRC approval, would be consolidated in a new Subpart I to Part 71. To provide greater consistency between the Parts 71 and 72 CoCs, the NRC staff would use the same 20-year term for both CoCs and would synchronize the CoCs' expiration dates. Further, the NRC staff would use the same 20-year term for a QA program approval to design or fabricate a Type B(DP) package.

Additionally, a new general license (§ 71.18) would be added to Subpart C that would require a licensee shipping spent fuel in a Type B(DP) package to have both a copy of the CoC and the current updated FSAR before making the shipment. Licensees would not be authorized under this proposed rule to make changes to a Type B(DP) package's design by themselves, but would be required to obtain certificate holder (i.e., the package designer) review and approval of the proposed change. Further, should the evaluation of the proposed change indicate that prior NRC approval is required, then only the certificate holder would be authorized to submit an application to the NRC to amend the CoC.

NRC believes that approval of proposed changes to the design of a Type B(DP) package, or submitting a request to modify a package's design,

should be restricted to the certificate holder. As described above, licensees have not previously been required to understand the design bases for a transportation package or the technical bases of the Part 71 regulations.

The NRC believes that the new parallel structure provides a choice to applicants desiring to obtain transportation certification for a spent fuel storage and transportation package. This proposed structure (in Subpart I) would not restrict an applicant's right to obtain a CoC for a spent fuel transportation package under the existing requirements in Subpart D. Applicants can weigh the costs and benefits associated with each approach against the needs of its customers and determine which approach is better. Consequently, the NRC believes the new parallel structure is voluntary and does not impose a backfit.

Additional conforming changes would be made to § 71.0 to include Type B(DP) packages within the scope of Part 71; to § 71.4 to add a definition for Certificate of compliance, Type B(DP) packages, and Structures, systems, and components important to safety; to § 71.6 to reflect the new recordkeeping and reporting requirements created by the addition of new Subpart I (required under the Paperwork Reduction Act); to add a new § 71.10 to provide for public availability of applications; to § 71.51 to exclude Type B(DP) packages; and to § 71.100 to indicate which of these new sections (i.e., § 71.18 and Subpart I) would be subject to criminal penalties.

The NRC draft RA indicates that the proposed expansion of Part 71 to include a new § 71.175, ''Changes, tests, and experiments,'' to include Part 71 certificate holders is reasonable from a regulatory, cost, and safety perspective. As noted, however, NRC has very limited data from which to draw this conclusion. The NRC believes that not adopting these provisions may be awkward and appears to result in a regulatory inconsistency. Specifically, this inconsistency appears in situations where a certificate holder for a dual-purpose cask design could not modify the design of a component that had both storage and transport functions without prior NRC approval, irrespective of the certificate holder's authority under § 72.48 to modify the design of a storage cask. While the adoption of this change would not be consistent with the requirements in TS-R–1, NRC believes the benefits to be gained by allowing Part 50 and Part 72 licensees and the Part 71 certificate holder to revise the cask design for a dual-purpose cask outweigh the potential impacts of this inconsistency. Further, these impacts would be offset by restricting this authority to packages intended for domestic shipments only. Preliminary estimates indicate that NRC costs would decline slightly by adopting this change, because NRC would not have to review as many license amendments each year. This cost savings was determined to be negligible in the § 72.48 regulatory analysis, and would be offset by the agency having to adopt new document controls to handle the ''minimal change'' submission required every 2 years for licensees making ''minimal changes.'' For the 350 recordkeeping licensees listed in the Part 71 Supporting Statement, professional judgment was used to assume that, in any given year, 50 percent of licensees will perform a ''minimal change'' as described in § 72.48 over a 2-year period. Submittals under § 72.48 are required every 2 years; therefore, approximately 88 submittals are expected per year. The cost savings of reporting ''minimal changes'' versus preparing license amendments is estimated at approximately $2.4 million per year. The 350 licensees would incur a one-time recordkeeping cost of approximately $2.3 million the first year this change is implemented.

NRC Proposed Position. The NRC proposes to add a new type of package (dual-purpose) to Part 71 [i.e., Type B(DP)]. Type B(DP) transportation packages would be certified for the storage of spent fuel under Part 72 and for transportation of spent fuel under Part 71. Type B(DP) packages would be restricted to use in domestic commerce. Requirements on the submission, review, amendment, and issuance of a CoC for a Type B(DP) package would be contained in a new Subpart I to Part 71. A new general license providing for the use of a Type B(DP) package would be added to Subpart C (§ 71.18). Certificate holders for Type B(DP) packages would also be required to submit, and periodically update, an FSAR describing the package's design. Additionally, only the certificate holder for a Type B(DP) package would be allowed under Subpart I to make changes to the package's design.

Additionally, conforming changes would be made to §§ 71.0, 71.4, 71.6, 71.10, 71.17, and 71.100

Affected Sections. §§ 71.0, 71.4, 71.6, 71.10, 71.17, 71.18, 71.100, and 71.151 through 71.177.

Issue 16. Fissile Material Exemptions and General License Provisions

Background. The NRC published an emergency final rule amending its regulations on shipments of small quantities of fissile material (62 FR 5907; February 10, 1997). This rule revised the regulations on fissile exemptions in § 71.53 and the fissile general licenses in §§ 71.18 and 71.22. The NRC determined that good cause existed, under Section 553(b)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)), to publish this final rule without notice and opportunity for public comment. Further, the NRC also determined that good cause existed, under Section 553(d)(3) of the APA (5 U.S.C. 553(d)(3)), to make this final rule immediately effective. Notwithstanding the final status of the rule, the NRC provided for a 30-day public comment period. The NRC subsequently published in the **Federal Register** (64 FR 57769; October 27, 1999) a response to the comments received on the emergency final rule and a request for information on any unintended economic impacts caused by the emergency final rule.

The NRC issued this emergency final rule in response to a regulatory defect in the fissile exemption regulation in § 71.53 which was identified by an NRC licensee. The licensee was evaluating a proposed shipment of a special fissile material and moderator mixture (beryllium oxide mixed with a low concentration of high-enriched uranium). The licensee concluded that while § 71.53 was applicable to the proposed shipment, applying the requirements of § 71.53 could, in certain circumstances, result in an inadequate level of criticality safety (i.e., an accidental nuclear criticality was possible in certain unique circumstances).[8]

The NRC staff confirmed the licensee's analysis that this beryllium oxide and high-enriched uranium mixture created the potential for inadequate criticality safety during transportation. An added factor in the urgency of the situation was that under the NRC regulations in §§ 71.18, 71.20, 71.22, 71.24, and 71.53, these types of fissile material shipments could be made without prior approval of NRC. For many years, NRC allowed these shipments of small quantities of fissile material based on NRC's understanding

[8] For transportation purposes, ''nuclear criticality'' means a condition in which an uncontrolled, self-sustaining, and neutron-multiplying fission chain reaction occurs. ''Nuclear criticality'' is generally a concern when sufficient concentrations and masses of fissile material and neutron moderating material exist together in a favorable configuration. Neutron moderating material cannot achieve criticality by itself in any concentration or configuration. However, it can enhance the ability of fissile material to achieve criticality by slowing down neutrons or reflecting neutrons.

of the level of risk involved with these shipments, as well as industry's historic transportation practices. This experience base had led NRC (and its predecessor, the Atomic Energy Commission (AEC)) to conclude that shipments made under the fissile exemption provisions of Part 71 typically required minimal regulatory oversight (i.e., NRC considered these types of shipments to be inherently safe).[9]

All public comments on the emergency final rule supported the need for limits on special moderators (i.e., moderators with low neutron-absorption properties such as beryllium, graphite, and deuterium). However, the commenters stated that the restrictions were far too limiting (to the point that some inherently safe packages were excluded from the fissile exemption) and could lead to undue cost burdens with no benefit to safety. In addition, the commenters believed that the consignment mass limits set to deter undue accumulation of fissile mass would be extremely costly. Therefore, the commenters recommended that further rulemaking was necessary to resolve these excessive restrictions. Based on the public comments on the emergency final rule, NRC staff contracted with Oak Ridge National Laboratory (ORNL) to review the fissile material exemptions and general license provisions, study the regulatory and technical bases associated with these regulations, and perform criticality model calculations for different mixtures of fissile materials and moderators. The results of the ORNL study were documented in NUREG/CR–5342,[10] and NRC published a notice of the availability of this document in the **Federal Register** (63 FR 44477; August 19, 1998). The ORNL study confirmed that the emergency final rule was needed to provide safe transportation of packages with special moderators that are shipped under the general license and fissile material exemptions, but the regulations may be excessive for shipments where water moderation is the only concern. The ORNL study recommended that NRC revise Part 71.

Subsequently, NRC published a **Federal Register** notice that responded to public comments on the emergency final rule and requested additional information on the cost impact of the emergency final rule from the public, industry, and DOE (64 FR 57769; October 27, 1999). The Commission requested this cost impact information because the NRC staff was not successful in obtaining this information. Specifically, NRC requested information on the cost of shipments made under the fissile material exemptions and general license provisions of Part 71 before the publication of the emergency final rule, and those costs and/or changes in costs resulting from implementation of the emergency rule. One commenter agreed with the NRC approach, but stated that, ''the limits for those materials containing no special moderators can and should be increased, hopefully back to their pre-emergency rule levels.''

As part of NUREG/CR–5342, ORNL performed computer model calculations of k_{eff} (k-effective) for various combinations of fissile material and moderating material, including beryllium, carbon, deuterium, silicon-dioxide, and water, to verify the accuracy of current minimum critical mass values. These minimum critical mass values were then applied to the regulatory structure contained in Part 71, and revised mass limits for both the general license and exemption provisions to Part 71 were determined. Also, ORNL researched the historical bases for the fissile material exemption and general license regulations in Part 71 and discussed the impact of the emergency final rule's restrictions on NRC licensees. ORNL concluded that the restrictions imposed by the emergency final rule were necessary to address concerns relative to uncontrolled accumulation of exempt packages (and thus fissile mass) in a shipment and the potential for inadequate safety margin for exempt packages with large quantities of special moderators.

Based on its new k_{eff} calculations, ORNL suggested that: (1) The mass limits in the general license and exemption provisions could be safely increased and thereby provide greater flexibility to licensees shipping fissile radioactive material; and (2) additional revisions to Part 71 were appropriate to provide increased clarification and simplification of the regulations. Copies of NUREG/CR–5342 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161–0002. A copy is also available for inspection and copying, for a fee, at the NRC Public Document Room in the NRC Headquarters at One White Flint North, Room O–1F23, 11555 Rockville Pike, Rockville, MD 20852–2738.

Discussion. The NRC has received public comments on this issue in response to the Issues Paper, public meetings, and the workshop. Industry representatives, public interest organizations, Agreement States, and members of the public supported the issue. None of the comments presented new issues from those previously presented in response to the emergency final rule or the Commission's request for additional cost information.

Addressing the emergency final rule, one commenter agreed with the necessity for the rule, but stated that there are issues yet to be resolved for water moderated shipments. In comparison, another commenter took issue with our stated goal and NRC's methods. This commenter believed that if NRC adopts these provisions, then NRC will be unable to conform with TS–R–1. The commenter cited as evidence a statement in the issues paper, ''IAEA standard ST–1 (nee TS–R–1) contains language on fissile exemptions and restrictions on the use of special moderators. However, ST–1 does not currently contain provisions on general licenses for shipment of fissile material.''

Similarly, one commenter raised the importance of coordinating regulatory actions on fissile material exemptions with the international community. The commenter noted the international community's interest in fissile material exemptions and encouraged NRC to listen to its international counterparts at the next IAEA meeting; the commenter's goal being to ensure that NRC is not out of step with the rest of the world (i.e., fissile material exempt in the U.S. is not exempt elsewhere, and vice-versa).

One commenter raised questions concerning specific recommendations in NUREG/CR–5342. The commenter was concerned in how recommendations 3 and 4 would introduce unnecessary complexity and noted that this concern vanishes if the TS–R–1 definitions for regulated material are adopted. The commenter also stated that recommendation 17 could seemingly eliminate the fissile excepted category,

[9] The NRC's regulations in part 71 ensure protection of public health and safety by requiring that Type AF, B, or BF packages used for transportation of large quantities of radioactive materials be approved by the NRC. This approval is based upon the NRC's review of applications which contain an evaluation of the package's response to a specific set of rigorous tests to simulate both normal conditions of transport (NCT) and hypothetical accident conditions (HAC). However, certain types of packages are exempted from the testing and NRC prior approval; these are fissile material packages that either contain exempt quantities (§ 71.53), or are shipped under the general license provisions of §§ 71.18, 71.20, 71.22, or 71.24.

[10] NUREG/CR–5342, ''Assessment and Recommendations for Fissile-Material Packaging Exemptions and General Licenses Within 10 CFR Part 71,'' July 1998.

which is something the commenter did not want to see occur. If such a change is necessary, the commenter requested that the NRC instead revise the excepted package's definition to reduce the amount of fissile material present and ensure that 10 CFR 71.53 and 49 CFR 173.453 are consistent with TS–R–1 (i.e., with respect to upper limits on a package's fissile material, as well as the total amount of fissile material in a fissile exempt consignment).

The current restrictions on fissile exempt and general license shipments under §§ 71.53, and 71.18 through 71.24, respectively, are burdensome for a large number of shipments that actually contain no special moderating materials (i.e., packages that are shipped with water considered as the potential moderating material). This problem was clearly expressed in public comments on the emergency final rule. Another regulatory problem is that the current fissile exempt and general license provisions are cumbersome and outdated; this was one of the main conclusions of the ORNL study. Therefore, the NRC would update, simplify, and streamline these sections of Part 71 to eliminate regulatory confusion.

The proposed revisions in Table 16–1 are based on public comments received on the February 10, 1997, emergency final rule, on the subsequent Commission's direction in SRM–SECY–99–200 regarding the unintended economic impact of that emergency final rule, and on the latest public comments received on the July 2000 Issues Paper. Altogether, ORNL suggested 17 changes to the Part 71 regulations in NUREG/CR–5342. A summary of these changes and the NRC's assessment and recommendation are contained in Table 16–1. NUREG/CR–5342 contains a more detailed discussion of the proposed changes listed in Table 16–1 and ORNL's supporting calculations.

TABLE 16–1.—SUMMARY OF RECOMMENDED CHANGES IN NUREG/CR–5342

Description of issue	NRC staff recommendation
Issue 16–1: Definitions for ''consignment,'' ''consignor,'' and ''shipper'' should be provided to reduce confusion between regulations in 49 CFR Part 173 and 10 CFR Part 71.	Disagree. These changes are not necessary with the use of mass ratio limits and a criticality safety index when combined with the current requirement in § 71.59.
Issue 16–2: Plutonium-238 should be removed from the definition of ''fissile material,'' because ^{238}Pu is only fissionable, not fissile.	Agree.
Issue 16–3: The exemption for radioactive material in § 71.10(a) should be revised to exclude fissile material. ORNL's concern was that a large quantity of a low-concentration fissile material could pose a criticality safety concern. The revised k_{eff} calculations indicate that a 43 Bq/g (1.16 × 10–3 μCi/g) limit for fissile material (^{235}U) would be necessary. However, other fissile nuclides have higher limits (e.g, 6,230 Bq/g (0.168 μCi/g) for ^{233}U or 66,000 Bq/g (1.784 μCi/g) for ^{241}Pu) or the Appendix A, new Table A–2, values are only 10 Bq/g (2.7) × 10–4 uCi/g) (e.g., ^{239}Pu).	Disagree. The existing exception to the exemption in paragraph (b) would be maintained (i.e., the reference to the fissile exemption in new § 71.15). However, no change would be made to paragraph (a) because the values in Table A–2 are less than 43 Bq/g (1.16 × 10^{-3} μCi/g) or the fissile nuclides have criticality limits which would be higher than the exempt concentration limits of Table A–2.
Issue 16–4: The exemption for radioactive material in existing § 71.10 should be revised to require shipment in an acceptable package as required by existing § 71.11 to improve safety.	Agree.
Issue 16–5: Section 71.53 should be relocated from Subpart E—Package Approval Standards, to Subpart B—Exemptions, to provide greater consistency in Part 71. (Note: § 71.53 would also be redesignated as § 71.15.).	Agree.
Issue 16–6: The NRC or DOT should keep a database of shipments made under the fissile exemption or general licenses. Section 71.97 should be revised to require licensees to keep these records and report this information.	Disagree. The licensee's burden in keeping and reporting these records is not commensurate with the safety risk for fissile exemption shipments.
Issue 16–7: The provisions for plutonium-beryllium (Pu-Be) shipments should be removed from the four general licenses of existing §§ 71.18, 71.20, 71.22, and 71.24 and consolidated in a new general license. The mass limits for Pu-Be shipments should be reduced, because the revised k_{eff} calculations indicate potential safety problems exist with the current limits.	Agree.
Issue 16–8: The general licenses of existing §§ 71.18, 71.20, 71.22, and 71.24 should be consolidated into one general license to simplify the regulations and consistently apply the criticality safety index (CSI).	Agree.
Issue 16–9: The distinction between quantities of ^{235}U that can be shipped in a uniform distribution and nonuniform distribution should be eliminated from the general licenses. The bounding nonuniform quantities should be used to simplify compliance with the rule.	Agree.
Issue 16–10: Restrictions on the quantities of Be, C, and D_2O to less than 0.1% should be removed for the general licenses. A maximum of 500g of Be, C, and D_2O per package should be imposed to preclude the potential for these materials to be effective as reflector materials.	Agree.
Issue 16–11: A separate mass control or restriction for moderators having a hydrogen density greater than water should be retained for general licenses. For mixtures of moderators, lower mass limits should be imposed if more than 15% of the moderating material has a moderating effectiveness greater than the hydrogen density of water. Use of a 15% mixture limit would reduce confusion when mixtures of moderators are present in a shipment.	Agree.
Issue 16–12: Package mass limits for general licenses may be increased to reflect results of new analyses and still maintain equivalence of safety as provided for requirements certified packages.	Agree. Also, minimum package requirements should be established. However, imposing § 71.43 requirements would be excessive for the commensurate risk from these shipments. Instead, the DOT Type A package requirements should be used.
Issue 16–13: Package mass limits for general licenses should be revised to reflect the new k_{eff} calculations. These mass limits can be safely increased.	Agree.

TABLE 16–1.—SUMMARY OF RECOMMENDED CHANGES IN NUREG/CR–5342—Continued

Description of issue	NRC staff recommendation
Issue 16–14: The mass-limit based exemption in existing § 71.53(a) should be changed to a mass-ratio based approach. In contrast to concentration-based approaches with consignment limits that are now in use in the fissile exemptions, the mass-ratio approach should provide a simpler, more cost-effective approach to preventing the formation of system configurations having inadequate subcritical margins as a result of transport scenarios (§§ 71.71 and 71.73).	
Issue 16–15: If a mass-ratio approach is used, the restrictions on Be, C, and D_2O in existing § 71.53(a), (c), and (d) should be removed.	Agree.
Issue 16–16: The exemption for uranyl nitrate solutions in § 71.53(c) should include a packaging requirement from existing § 71.43.	Agree in part. Minimum package requirements should be established. However, § 71.43 is excessive for the commensurate risk from these shipments. The DOT Type A package requirements should be used.
Issue 16–17: The exemption for uranium enriched to less than 1 wt % ^{235}U in existing § 71.53(b) should be modified to remove the homogeneity requirements and lattice prevention requirement. Instead, retain the 0.1% Be, C, and D_2O limit because of the difficulty in defining and applying ''homogenous'' and ''lattice arrangement'' restrictions.	Agree.

In addition to the recommendations contained in NUREG/CR–5342, the Commission directed the NRC staff, in SRM–M970122B on SECY–96–268, to issue additional guidance in instances where fissile materials may be mixed in the same shipping container with different moderators (i.e., materials of differing moderator effectiveness). Therefore, the NRC would add a note to Table 71–1 in existing § 71.22 to use reduced mass limits if more than 15 percent of the moderating materials in a package have a moderating effectiveness greater than the average hydrogen density of H_2O (see Issue 16–11 in Table 16–1 above).

The NRC believes these changes would provide greater flexibility in the shipment of fissile material under the fissile exemption and general license regulations. The NRC would revise these requirements using a risk-informed approach, and address the burden and excessiveness issues raised in the public comments on the emergency final rule. The NRC would use a graduated regulatory approach in establishing requirements for the shipment of fissile material. The graduated approach would involve three tiers of regulations consisting of: (1) The fissile material exemptions with low fissile mass limits and minimal requirements (i.e., the new § 71.15); (2) the fissile general licenses with higher mass limits and packaging and QA requirements (i.e., the new §§ 71.22 and 71.23); and (3) the Type AF, BF, B(U)F, or B(M)F fissile material packages with large mass limits that require prior NRC approval of the package design (i.e., the existing § 71.55). The NRC believes this approach would establish a risk-informed framework by imposing progressively stricter requirements as the quantity of fissile material being shipped increases (i.e., the criticality hazard increases). In accomplishing this risk-informed approach, some mass limits in the general licenses would increase, and others would decrease. These changes would reflect the new K_{eff} calculations in NUREG/CR–5342. To counterbalance the increases in mass limits in the general licenses, requirements would be added on the use of a Type A package, a CSI, and an NRC-approved QA program.

While the NRC is proposing to adopt the use of the CSI for general licensed fissile packages, the NRC is proposing to retain the current per package (CSI) limit of 10, rather than raising the per package limit to 50 (see Issue 5). TS–R–1 does not address the issue of fissile general licenses, so no compatibility issues arise with retention of the current NRC per package limit of 10. NRC staff believes that because reduced regulatory oversight is imposed on fissile general license shipments (e.g., the package standards of §§ 71.71 and 71.73, fissile package standards of § 71.55, and fissile array standards of § 71.59 are not imposed for fissile general license shipments), retention of the current per package limit of 10 is appropriate. Furthermore, retention of the current per package limit of 10 would not impose a new burden on licensees; rather, licensees shipping fissile material under the general license provisions of §§ 71.22 and 71.23 would not be permitted to take advantage of the relaxation of the per package CSI limit from 10 to 50 that would be permitted for Types A(F) and B(F) package shipments.

Overall, the NRC would amend Part 71 as follows: (1) Revise § 71.10, ''Exemption for low level material,'' to exclude fissile material, also redesignate § 71.10 as 71.14; (2) redesignate § 71.53 as § 71.15, ''Exemption from classification as fissile material,'' and revise the fissile exemptions; (3) consolidate the existing four general licenses in existing §§ 71.18, 71.20, 71.22, and 71.24 into one general license in new § 71.22, revise the mass limits, and add Type A package, CSI, and QA requirements; and (4) consolidate the existing general license requirements for plutonium-beryllium sealed sources, which are contained in existing §§ 71.18 and 71.22 into one general license in new § 71.23 and revise the mass limits. Additionally, conforming changes would be made to § 71.4, ''Definitions'' and § 71.100, ''Criminal penalties.''

The NRC draft RA indicates that incorporating revisions to the fissile material exemption and general license provisions in Part 71 is appropriate from a safety, regulatory, and cost perspective. As stated earlier, there is a shortage of data on the fissile material general license and exempt shipments; consequently, the NRC was not successful in obtaining data to quantify the economic impact which would result from adopting some or all of the 17 recommendations in NUREG/CR–5342. The impact of these amendments on the licensees and the NRC would be both positive and negative, depending on the specific recommendation. Recommendations 1, 2, and 5 would enhance regulatory efficiency due to the increase in clarity of the NRC regulations. Recommendations 3, 4, 6, 9, and 12 would increase costs to licensees. Recommendations 7, 8, 10, 13, 14, and 15 would eliminate the potential for criticality accidents, which would, in turn, yield environmental and

public health and safety benefits. Finally, recommendations 11, 16, and 17 would result in savings to licensees.

NRC Proposed Position. The NRC proposes revisions to the fissile material exemptions and the general license provisions in Part 71.

Affected Sections. §§ 71.4, 71.10, 71.11, 71.18, 71.20, 71.22, 71.24, 71.53, 71.59, and 71.100.

Issue 17. Double Containment of Plutonium (PRM–71–12)

Background: In 1974, the AEC issued a final rule which imposed special requirements on the shipment of plutonium (39 FR 20960; June 17, 1974). These requirements are located in § 71.63 and apply to shipments of radioactive material containing quantities of plutonium in excess of 0.74 TBq (20 curies). Section 71.63 contains two principal requirements. First, the plutonium contents of the package must be in solid form (§ 71.63(a)). Second, the packaging containing the plutonium must provide a separate inner containment (i.e., the ''double containment'' requirement) (§ 71.63(b)). In addition, the AEC specifically excluded from the double containment requirement of § 71.63(b) plutonium in the form of reactor fuel elements, metal or metal alloys, and other plutonium-bearing solids that the Commission (AEC or NRC) may determine, on a case-by-case basis, do not require double containment. This regulation remained essentially unchanged from 1974 until 1998, when vitrified high-level waste in sealed canisters was added to the list of exempt forms of plutonium in § 71.63(b) (63 FR 32600; June 15, 1998). The double containment requirement is in addition to the existing subparts E and F requirements imposed on Type B packagings (e.g., the normal conditions of transport and hypothetical accident conditions of §§ 71.71 and 71.73, respectively, and the fissile package requirements of §§ 71.55 and 71.59). Part 71 does not impose a double containment requirement for any radionuclide other than plutonium. Additionally, IAEA standard TS–R–1 does not provide for a double containment requirement (in lieu of the single containment Type B package standards) for any radionuclide.

The AEC issued this regulation at a time when AEC staff anticipated widespread reprocessing of commercial spent fuel, and existing shipments of plutonium were made in the form of liquid plutonium nitrate. Because of physical changes to the plutonium that was expected to be reprocessed (i.e., higher levels of burnup in commercial reactors for spent fuel, which would then be reprocessed), and regulatory concerns with the possibility of package leakage, the AEC issued a regulation that imposed the double containment requirement when the package contained more than 0.74 TBq (20 Ci) of plutonium. This double containment was in addition to the existing Type B package standards on packages intended for the shipment of greater than an A1 or A2 quantity of plutonium.

NRC staff has reviewed the available regulatory history for § 71.63, and has provided a recapitulation of the supporting information which led to the issuance of this regulation. NRC staff has extracted the following information from several SECY papers the AEC staff submitted to the Commission on this regulation. NRC staff believes this information is relevant and will provide stakeholders with perspective in understanding the bases for this regulation, and thereby assist stakeholders in evaluating the staff's proposed changes to this regulation.

In SECY–R–702,[11] the AEC staff identified two considerations that were the genesis of the rulemaking that led to § 71.63. AEC staff stated:

> First, increasingly larger quantities of plutonium will be recovered from power reactor spent fuel. Second, the specific activity of the plutonium will increase with higher reactor fuel burnup resulting in greater pressure generation potential from plutonium nitrate solutions in shipping containers, greater heat generation, and higher gamma and neutron radiation levels. These changes will make the present nitrate packages obsolete. Thus, from both safety and economic considerations, the transportation of plutonium as [liquid] nitrate will soon require substantial redesign of packages to handle larger quantities as well as to deal with the higher levels of gas evolution (pressurization), heat generation, and gamma and neutron radiation.
>
> There is little doubt that larger plutonium nitrate packages could be designed to meet regulatory standards. The increased potential for human error and the consequences of such error in the shipment of plutonium nitrate are not so easily controlled by regulation. Even though such packages may be adequately designed, their loading and closure requires high operation performance by personnel on a continuing basis. As the number of packages to be shipped increases, the probability of leakage through improperly assembled and closed packages also increases.* * * More refined or stringent regulatory requirements, such as double containment, would not sufficiently lessen this concern because of the necessary dependence on people to affect engineered safeguards.

[11] SECY–R–702, ''Consideration of Form for Shipping Plutonium,'' June 1, 1973.

In SECY–R–74–5,[12] AEC staff summarized the factors relevant to consideration of a proposed rule following a June 14, 1973, meeting to discuss SECY–R–702, between the Regulatory and General Manager's staffs (i.e., the rulemaking and operational sides of the AEC). The AEC stated:

> As a result of this meeting [on June 14, 1973], the [Regulatory and General Manager's] staffs have agreed that the basic factors pertinent to the consideration of form for shipment of plutonium are:
>
> 1. The experience with shipping plutonium as an aqueous nitrate solution in packages meeting current regulatory criteria has been satisfactory to date.
> 2. The changing characteristic of plutonium recovered from power reactors will make the existing packaging obsolete for plutonium nitrate solutions and possibly for solid form. Economic factors will probably dictate considerably larger shipments (and larger packages) than currently used.
> 3. It is expected that packages can be designed to meet regulatory standards for either aqueous solutions or solid plutonium compounds. Just as in any situation involving the packaging of radioactive materials, a high level of human performance is necessary to assure against leakage caused by human error in packaging. As the number of plutonium shipments increases, as it will, and packages become larger and more complex in design, the probability of such human error increases.
> 4. The probability of human error with the packaging for liquid, anticipated to be more complex in design, is probably greater than with the packaging for solid. Furthermore, should a human error occur in package preparation or closure, the probability of liquid escaping from the improperly prepared package is greater than for most solids and particularly for solid plutonium materials expected to be shipped.
> 5. Staff studies reported in SECY–R–62 and SECY–R–509[13] conclude that the consequences of release of solid or aqueous solutions do not differ appreciably. Therefore, this paper (SECY-R–702) does not deal with the consequences of releases.
> 6. It is therefore concluded that safety would be enhanced if plutonium were shipped as a solid rather than in solution.

The arguments for requiring a solid form of plutonium for shipment are largely subjective, in that there is no hard evidence on which to base statistical probabilities or to assess quantitatively the incremental increase in safety which is expected. The

[12] SECY–R–74–5, ''Consideration of Form for Shipping Plutonium,'' dated July 6, 1973.

[13] SECY–R–62, ''Shipment of Plutonium,'' and SECY–R–509, ''Plutonium Handling and Storage,'' dated October 16, 1970. These papers concluded that there is no scientific or technical reason to prohibit shipment of plutonium nitrate and recommended that Commission (AEC) efforts be directed toward providing improved safety criteria for shipping containers.

discussion in the regulatory paper, SECY–R–702, is not intended to be a technical argument which incontrovertibly leads to a conclusion. It is, rather, a presentation of the rationale which has led the Regulatory staff to its conclusion that a possible problem may develop and that the proposed action is a step towards increased assurance against the problem developing. In SECY–R–74–172,[14] AEC staff submitted a final rule to the Commission for approval.

The proposed rule had contained a requirement that the plutonium be contained in a special form capsule. However, in response to comments from the AEC General Manager, the final rule changed this requirement to a separate inner container (i.e., the double containment requirement). The AEC staff indicated in a response to a public comment in Enclosure B (to SECY–R–74–172) that ''[t]he need for the inner containment is based on the desire to provide a substitute for not requiring the plutonium to be in a 'nonrespirable' form.''

The NRC staff believes the regulatory history of § 71.63 indicates that the AEC's decision to require a separate inner container for shipments of plutonium in excess of 0.74 TBq (20 Ci) was based on policy and regulatory concerns (i.e., ''that a possible problem may develop and that the proposed action [in SECY–R–702] is a step towards increased assurance against the problem developing''). Because of the expectation of a significant increase in the number of liquid plutonium nitrate shipments, the AEC used a defense-in-depth philosophy (i.e., the double containment and solid form requirements), to ensure that respirable plutonium would not be released to the environment during a transportation accident. However, the regulatory history does indicate that the AEC's concerns did not involve the adequacy of existing liquid plutonium nitrate packages. Rather, the AEC's regulatory concern was on the increased possibility of human error combined with an expected increase in the number of shipments would yield an increased probability of leakage during shipment. The AEC's policy concern was based on an economic decision on whether the AEC should require the reprocessing industry to build new, larger liquid plutonium-nitrate shipping containers, capable of handling higher burnup reactor spent fuel, or to build new, dry, powdered plutonium-dioxide shipping containers. The regulatory history indicates that the AEC staff judged that new, larger, higher burnup-capacity liquid plutonium-nitrate packages could be designed, approved, built, and safely used. However, one of the AEC's principal underlying assumptions for this rule was obviated in 1979 when the Carter administration decided that reprocessing of civilian spent fuel and reuse of plutonium was not desirable. Consequently, the expected plutonium reprocessing economy and widespread shipments of liquid plutonium nitrate within the U.S. never materialized.

On June 15, 1998, in response to a petition for rulemaking submitted by DOE (PRM–71–11), the Commission issued a final rule revising § 71.63(b) to add vitrified high-level waste (HLW) contained in a sealed canister to the list of forms of plutonium exempt from the double containment requirement (June 15, 1998; 63 FR 32600). In its original response to PRM–71–11, NRC proposed in SECY–96–215[15] to make a ''determination'' under § 71.63(b)(3) that vitrified HLW contained in a sealed canister did not require double containment. However, the Commission in an SRM on SECY–96–215, dated October 31, 1996, disapproved the staff's approach and directed that resolution of this petition be addressed through rulemaking (the June 15, 1998, final rule was the culmination of this effort). In addition to disapproving the use of a ''determination'' process, the Commission also directed the staff to ''* * * also address whether the technical basis for 10 CFR 71.63 remains valid, or whether a revision or elimination of portions of 10 CFR 71.63 is needed to provide flexibility for current and future technologies.'' In SECY–97–218,[16] NRC responded to the SRM's direction and stated ''[t]he technical basis remains valid and the provisions provide adequate flexibility for current and future technologies.''

Petition: The NRC received a petition for rulemaking from International Energy Consultants, Inc. (IEC), dated September 25, 1997. The petition was docketed as PRM–71–12 and was published for public comment (63 FR 8362; February 19, 1998). Based on a request from General Atomic, the comment period was extended to July 31, 1998 (see 63 FR 34335; June 24, 1998). Nine public comments were received on the petition. Four commenters supported the petition, and five commenters opposed the petition.

The petitioner requested that § 71.63(b) be removed. The petitioner argued that the double containment provisions of § 71.63(b) cannot be supported technically or logically. The petitioner stated that based on the ''Q-system for the Calculation of A_1 and A_2 Values,'' an A_2 quantity of any radionuclide has the same potential for damaging the environment and the human species as an A_2 quantity of any other radionuclide.

NRC believes that the Q-values are based upon radiological exposure hazard models which calculate the allowable quantity limit (the A_1 or A_2 value) necessary to produce a known exposure (i.e., one A_2 of plutonium-239 or one A_2 of cobalt-60 will both yield the same radiation dose under the Q-system models, even though the A_2 values for these nuclides are different [e.g., one A_2 of plutonium-239 = 2 x 10_4 TBq of plutonium and one A_2 of cobalt-60 = 1 TBq of cobalt]). The Q-system models take into account the exposure pathways of the various radionuclides, typical chemical forms of the radionuclide, methods for uptake into the body, methods for removal from the body, the type of radiation the radionuclide emits, and the bodily organs the radionuclide preferentially affects. The specific A_1 and A_2 values for each nuclide are developed using radiation dosimetry approaches recommended by the World Health Organization and the International Commission on Radiological Protection (ICRP). The models are periodically reviewed by international health physics experts (including representatives from the United States), and the A_1 and A_2 values are updated during the IAEA revision process, based upon the best available data. (Note that changes to the A_1 and A_2 values as a result of changes to the models in TS–R–1 are also discussed in Issue 3.) These values are then issued by the IAEA in safety standards such as TS–R–1. When the IAEA has revised the A_1 and A_2 values in previous revisions of its transport regulations, these revised values have been adopted by the NRC and DOT into the transportation regulations in 10 CFR Part 71 and 49 CFR Part 173, respectively.

NRC's review of the current A_1 and A_2 values in Appendix A to Part 71, Table A–1, reveals that 5 radionuclides have an A_2 value lower than plutonium (i.e., plutonium-239), and 11 radionuclides have an A_2 value that is equal to plutonium-239. Because the models used to determine the A_1 and A_2 values all result in the same radiation exposure

[14] SECY-R–74–172, ''Consideration of Form for Shipping Plutonium,'' April 18, 1974.

[15] SECY–96–215, ''Requirements for Shipping Packages Used to Transport Vitrified Waste Containing Plutonium,'' dated October 8, 1996.

[16] SECY–97–218, ''Special Provisions for Transport of Large Quantities of Plutonium (Response to Staff Requirements Memorandum—SECY–96–215),'' dated September 29, 1997.

(i.e., hazard), a smaller A_1 and A_2 value for one radionuclide would indicate a greater potential hazard to humans than a radionuclide with larger A_1 and A_2 value. Thus, the overall Table A–1 can also be viewed as a relative hazard ranking (for transportation purposes) of the listed radionuclides. In that light, requiring double containment for plutonium alone is not consistent with the relative hazard rankings in Table A–1.

The petitioner also argued that the Type B package requirements should be applied consistently for any radionuclide, whenever a package's contents exceed an A_2 limit. However, Part 71 is not consistent by imposing the double containment requirement for plutonium. The petitioner believes that if Type B package standards are sufficient for a quantity of a particular radionuclide which exceeds the A_2 limit, then Type B package standards should also be sufficient for any other radionuclide which also exceeds the A_2 limit. The petitioner stated that:

> While, for the most part, Part 71 regulations embrace this simple logical congruence, the congruence fails under 10 CFR 71.63(b) wherein packages containing plutonium must include a separate inner container for quantities of plutonium having a radioactivity exceeding 20 curies [0.74 TBq] (with certain exceptions).

The petitioner further stated that:

> If the NRC allows this failure of congruence to persist, the regulations will be vulnerable to the following challenges: (1) The logical foundation of the adequacy of A_2 values as a proper measure of the potential for damaging the environment and the human species, as set forth under the Q-System, is compromised; (2) the absence of a limit for every other radionuclide which, if exceeded, would require a separate inner container, is an inherently inconsistent safety practice; and (3) the performance requirements for Type B packages, as called for by 10 CFR Part 71, establish containment conditions under different levels of package trauma. The satisfaction of these Type B package standards should be a matter of proper design work by the package designer and proper evaluation of the design through regulatory review. The imposition of any specific package design feature such as that contained in 10 CFR 71.63(b) is gratuitous. The regulations are not formulated as package design specifications, nor should they be.

NRC agrees that the Part 71 regulations are not formulated as package design specifications; rather, the Part 71 regulations establish performance standards for a package's design. The NRC reviews the application to evaluate whether the package's design meets the performance requirements of Part 71. Consequently, the NRC can then conclude that the design of the package provides reasonable assurance that public health and safety and the environment are adequately protected.

The petitioner also believes that the continuing presence of § 71.63(b) engenders excessively high costs in the transport of some radioactive materials without a clearly measurable net safety benefit. The petitioner stated that this is so, in part, because the ultimate release limits allowed under Part 71 package performance requirements are identical with or without a ''separate inner container,'' and because the presence of a ''separate inner container'' promotes additional exposures to radiation through the additional handling required for the ''separate inner container.'' Consequently, the petitioner asserted that the presence or absence of a separate inner container barrier does not affect the standard to which the outer container barrier must perform in protecting public health and safety and the environment. Therefore, the petitioner concluded that given that the outer containment barrier provides an acceptable level of safety, the separate inner container is superfluous and results in unnecessary cost and radiation exposure. According to the petitioner, these unnecessary costs involve both the design, review, and fabrication of a package, as well as the costs of transporting the package. And the unnecessary radiation exposure involves workers having to handle (i.e., seal, inspect, or move) the ''separate inner container.''

As an alternative to the primary petition, the petitioner believes that an option to eliminate both § 71.63(a) and (b) should also be considered. Section 71.63(a) requires that plutonium in quantities greater than 0.74 TBq (20 Ci) be shipped in solid form. This option would have the effect of removing § 71.63 entirely. The petitioner believes that the arguments set forth to support the elimination of § 71.63(b) also support the elimination of § 71.63(a). The petitioner did not provide a separate regulatory or cost analysis supporting the request to remove § 71.63(a).

Comments on the Petition: The four commenters supporting the petition essentially stated that the IAEA's Q-system accurately reflects the dangers of radionuclides, including plutonium, and that elimination of § 71.63(a) and (b) would make the regulations more performance based, reduce costs and personnel exposures, and be consistent with the IAEA standards.

The five commenters opposing the petition essentially stated that: (1) Plutonium is very dangerous, especially in liquid form, and therefore additional regulatory requirements are warranted; (2) Existing regulations are not overly burdensome, especially in light of the total expected transportation cost; (3) TRUPACT–II packages meet current § 71.63(b) requirements (TRUPACT–II is a package developed by DOE to transport transuranic wastes (including plutonium) to the Waste Isolation Pilot Plant (WIPP) and has been issued a Part 71 CoC, No. 9218); (4) A commenter (the Western Governors' Association) has worked for over 10 years to ensure a safe transportation system for WIPP, including educating the public about the TRUPACT–II package; (5) Any change now would erode public confidence and be detrimental to the entire transportation system for WIPP shipments; and (6) Additional personnel exposure due to double containment is insignificant.

Discussion: The NRC has received 48 public comments on this issue in response to the Issue Paper, public meetings, and the workshop. Industry representatives and some members of the public support the petition. Public interest organizations, Agreement States, State representatives, the Western Governors' Association, and other members of the public oppose the petition. Several commenters believe that Congress, in approving the Waste Isolation Pilot Plant Land Withdrawal Act (the Act), Pub. L. 102–579 (106 Stat. 4777), Section 16(a), which mandates that the NRC certify the design of packages used to transport transuranic waste to WIPP, expected those packages to have a double containment. The NRC researched this issue, and Section 16(a) of the Act does not contain any explicit provisions mandating the use of a double containment in packages transporting transuranic waste to or from WIPP. Section 16(a) of the Act states, in part, ''[n]o transuranic waste may be transported by or for the Secretary [of the DOE] to or from WIPP, except in packages the design of which has been certified by the Nuclear Regulatory Commission* * *'' Furthermore, the NRC has reviewed the legislative history[17] associated with the Act and has not identified any discussions on the use of double containment for the shipment of

[17] See Congressional Record Vol. 137, November 5, 1991, pages S15984—15997 (Senate approval of S. 1671); Cong. Rec. Vol. 138, July 21, 1992, pages H6301—6333 (House approval of H.R. 2637); Cong. Rec. Vol. 138, October 5, 1992, pages H11868—11870 (House approval of Conference Report on S. 1671); Cong. Rec. Vol. 138, October 8, 1992 (Senate approval of Conference Report on S. 1671); and Cong. Rec. Vol. 138, October 5, 1992, pages H12221—12226 (Conference Report on S. 1671—(H.) Rpt. 102–1037).

transuranic waste. The legislative history does mention that the design of these packages will be certified by the NRC; however, this language is identical to that contained in the Act itself. Therefore, the NRC believes the absence of specific language in Section16(a) of the Act requiring double containment should be interpreted as requiring the NRC to apply its independent technical judgment in establishing standards for package designs and in evaluating applications for certification of package designs, to ensure that such packages would provide reasonable assurance that public health and safety and the environment would be adequately protected. In carrying out its mission, the courts have found that the NRC has broad latitude in establishing, maintaining, and revising technical performance criteria necessary to provide reasonable assurance that public health and safety and the environment are adequately protected. An example of these technical performance criteria is the Type B package design standards. Accordingly, the NRC believes that the proposed revision of a technical package standard (i.e., removal of the double containment requirement for plutonium from the Type B package standards) is not restricted by the mandate of Section 16(a) of the Act for the NRC to certify the design of packages intended to transport transuranic material to and from WIPP.

Other commenters stated that stakeholders' expectations were that packages intended to transport transuranic material to and from WIPP would include a double containment provision. Consequently, the commenters believed that removal of the double containment requirement would decrease public confidence in the NRC's accomplishment of its mission in the approval of the design of packages for the transportation of transuranic waste to and from WIPP. The commenters believed the public would view elimination of the double containment requirement as a relaxation in safety. The presence of a separate inner container provides defense-in-depth through an additional barrier to the release of plutonium during a transportation accident. In addition, the commenters believed that plutonium is so inherently deadly, that defense-in-depth is appropriate. The NRC agrees that a double containment does provide an additional barrier. However, the NRC believes that, for the reasons discussed below, double containment is unnecessary to protect public health and safety. The NRC and AEC have not required an additional containment barrier for Type B packages transporting any radionuclides other than plutonium and, before 1974, the AEC did not require double containment for plutonium.

In response to some of the comments opposed to the petition, the NRC believes that removal of § 71.63(b) would not invalidate the design of existing packages intended for the shipment of plutonium. These packages could continue to be used with a separate inner container. The NRC agrees with the commenters that a quantitative cost analysis was not provided by the petitioner.

The NRC has issued Part 71 CoC No. 9218 to DOE for the TRUPACT–II package (Docket No. 71–9218), for the transportation of transuranic waste (including plutonium) to and from the WIPP. The TRUPACT–II package complies with the current § 71.63(b) requirements and has a separate inner container. The TRUPACT–II SAR indicates that the weight of the inner container and its lid is approximately 2,620 lbs. Hypothetically, elimination of the separate inner container would increase the available payload for the TRUPACT–II package from the current 7,265 to 9,885 lbs. Thus, removal of the double containment requirement would potentially increase the TRUPACT–II's available payload by 36 percent. Further, the removal of the inner container from the TRUPACT–II would also potentially increase the available volume. The NRC believes that the proposed rule would not invalidate the existing TRUPACT–II design, and thus, DOE could continue to use the TRUPACT–II to ship transuranic waste to and from WIPP, or DOE could consider an alternate Type B package.

Additionally, based on comments received in the public meetings, the NRC believes that a misperception exists with respect to TRUPACT–II shipments; removal of the § 71.63(b) double containment requirement would not result in loose plutonium waste being placed inside a TRUPACT–II package. Based upon information contained in the SAR, plutonium wastes (i.e., used gloves, anti-Cs, rags, etc.) are placed in plastic bags, and these bags are sealed inside lined 55-gallon steel drums. Plutonium residues are placed inside cans which are then sealed inside a pipe overpack (a 6-inch or 12-inch stainless steel cylinder with a bolted lid), and the pipe overpack is then sealed inside a lined 55-gallon steel drum. The 55-gallon drums are then sealed inside the TRUPACT–II inner containment vessel, and finally the inner containment vessel is sealed inside the TRUPACT–II package. Consequently, the TRUPACT–II shipping practices employ multiple barriers, and removal of the inner containment vessel would not be expected to produce a significant incremental increase in the possibility of leakage during normal transportation. The NRC notes that some NRC regulations have established additional requirements for plutonium (e.g., the special nuclear material license application provisions of § 70.22(f)).

The NRC believes that the Type B packaging standards, in and of themselves, provide reasonable assurance that public health and safety and the environment would be adequately protected during the transportation of radioactive material. This belief is supported by an excellent safety record in which no fatalities or injuries have been attributed to material transported in a Type B package. Type B packaging standards have been in existence for approximately 40 years and have been incorporated into the Part 71 regulations by both the NRC and its predecessor, the AEC. The NRC's Type B package standards are based on IAEA's Type B package standards. Moreover, IAEA's Type B package standards have never required a separate inner container for packages intended to transport plutonium, nor for any other radionuclide. The NRC believes that while U.S. shipments of plutonium subject to § 71.63(b) have consisted primarily of solid plutonium contaminated wastes, other European countries have reprocessed plutonium in their reactor fuel cycles and have transported liquid plutonium nitrate. The NRC is not aware of any accidents involving a Type B liquid plutonium nitrate package which has led to the significant failure of the package and release of the contents.

Therefore, the NRC believes that imposition of an additional packaging requirement (in the form of a separate inner container) is fundamentally inconsistent with the position that Type B packaging standards, in and of themselves, provide reasonable assurance that public health and safety and the environment would be adequately protected during the transportation of (any type of) radioactive material. Thus, the NRC believes that § 71.63(b) is not consistent with the Type B packaging standards contained in part 71.

The NRC also believes that the regulatory history of § 71.63 demonstrates that the AEC's decision was based on policy and regulatory concerns. However, the NRC also agrees that the use of a double containment

does provide defense-in-depth and does decrease the absolute risk of the release of respirable plutonium to the environment during a transportation accident. Consequently, while the defense-in-depth afforded by a double containment does reduce risk, the NRC believes the question which should be focused on is whether the double containment requirement is risk-informed. The NRC is unaware of any risk studies that would provide either a qualitative or quantitative indication of the risk reduction associated with the use of double containment in transportation of plutonium. Rather, the NRC would look to the demonstrated performance record of existing Type B package standards to conclude that double containment is not necessary.

In summary, the AEC indicated (in SECY–R–702 and SECY–R–74–5), that liquid plutonium nitrate packages were safe, and new, larger packages to handle higher burnup reactor spent fuel could also be designed. NRC believes that the AEC's assumption for initiating this requirement was that large scale reprocessing of civilian reactor spent fuel and reuse of plutonium would occur. Former President Carter's administration's decision to forgo the reprocessing of civilian reactor spent fuel and reuse of plutonium obviated the AEC's assumption. Consequently, the AEC's supposition that a human error occurring while sealing a package of liquid plutonium nitrate was more likely to occur with the expected increase in shipments of plutonium nitrate was also obviated by the Government's decision to forgo the reprocessing of civilian reactor spent fuel. In SECY–97–218, NRC staff indicated that the separate inner container provided an additional barrier to the release of plutonium in an accident. NRC continues to believe that a separate inner container provides an additional barrier to the release of plutonium in an accident, just as a package with triple containment would provide an even greater barrier to the release of plutonium in an accident. However, this type of approach is not risk informed nor performance based. Consequently, based upon review of the petition, comments on the petition, and research into the regulatory history of the double containment requirement, the NRC agrees that a separate inner container is not necessary for Type B packages containing solid plutonium. NRC believes that the worldwide performance record over 40 years of Type B packages demonstrates that a single containment barrier is adequate. Therefore, the NRC agrees with the petitioner and believes that § 71.63(b) is not technically necessary to provide a reasonable assurance that public health and safety and the environment will be adequately protected during the transportation of plutonium.

While the NRC believes a case can be made for elimination of the separate inner container requirement in § 71.63(b), elimination of the solid form requirement in § 71.63(a) is not as clear. While the same arguments can be made on the obviation of the AEC's basis for originally issuing § 71.63(a) (i.e., the elimination of reprocessing of plutonium), the same regulatory inconsistency between Type B package standards and the inner containment requirement does not exist for the liquid versus solid form argument. The NRC considers the contents of a package when it is evaluating the adequacy of a packaging's design. The approved content limits and the approved packaging design together define the CoC for a package. However, other than criticality controls and the liquid form requirement of § 71.63(a), Subparts E and F do not contain any restrictions on the contents of a package. Thus, while the inner containment requirement in § 71.63(b) can be seen as conflicting with the Type B package standard because the inner containment affects the packaging's design, the solid form requirement of § 71.63(a) does not conflict with the packaging requirements of the Type B package standard because the solid form requirement affects only the contents of the package, not the packaging itself.

The NRC expects that cost and dose savings would accrue from the removal of § 71.63(b). However, because no shipments of liquid plutonium nitrate are contemplated in the U.S., NRC does not expect cost or dose savings to accrue from the removal of § 71.63(a). Further, the AEC's original bases have been obviated by former President Carter's administration's decision to not pursue a commercial fuel cycle involving the reprocessing of plutonium.

After weighing this information, the NRC continues to believe that the Type B package standards, when evaluated against 40 years of use worldwide, and millions of safe shipments of Type B packages, together provide reasonable assurance that public health and safety and the environment would be adequately protected during the transportation of radioactive material. The NRC believes that, in this case, the reasonable assurance standard, provided by the Type B package requirements, provides an adequate basis for the public's confidence in the NRC's actions.

NRC Proposed Position: The NRC would adopt, in part, the recommended action of PRM–71–12. Specifically, the NRC would remove the double containment requirement of § 71.63(b). However, the NRC would retain the package contents requirement in § 71.63(a). Shipments whose contents contain greater than 0.74 TBq (20 Ci) of plutonium must be made with the contents in solid form.

Affected Sections. § 71.63.

Issue 18. Contamination Limits as Applied to Spent Fuel and High Level Waste (HLW) Packages

Background. In the period of December 1997 through April 1998, the French Nuclear Installations Safety Directorate inspected a French nuclear power plant and railway terminal used by the La Hague reprocessing plant. The inspectors noticed that, since the beginning of the 1990's, a high percentage of spent fuel packages and/or railcars had a level of removable surface contamination that exceeded IAEA regulatory limits by as much as a factor of 1000. Subsequent investigations found that the contamination incidents involved shipments from other European countries, and the French transport authorities notified their counterparts of their findings. Subsequently, French, German, Swiss, Belgian, and Dutch spent fuel shipments were temporarily suspended.

After estimating the occupational and public doses from the contamination incidents, the European transport authorities concluded that these incidents did not have any radiological consequence. The contamination was believed to be caused by contact of the spent fuel package surface with contaminated water from the spent fuel storage pool during package handling operations. The authorities concluded that there were deficiencies in the contamination measurement procedures and the distribution of that information.

Media reports on these incidents focused attention on IAEA's regulations for removable contamination on package surfaces. TS–R–1 contains contamination limits for all packages of 4.0 Bq/cm ^{2} for beta and gamma and low toxicity alpha emitting radionuclides, and 0.4 Bq/cm^2 for all other alpha emitting radionuclides. Although TS–R–1 uses the term limit, IAEA considers these ''limits'' to be guidance values, or derived values, above which appropriate action should be considered. In cases of contamination above the limit, that action is to decontaminate to below the limits.

The current TS–R–1 limits for removable package surface contamination were derived from a radiological model developed for the 1961 Edition of the IAEA regulations. The exposure pathways considered in the model included external irradiation of the skin, and ingestion and inhalation from resuspension of the contamination in air. The model uses values for the degree to which surface contamination is resuspended in air, making it available for inhalation, and for the number of hours of exposure to the resuspended contamination. The values were chosen to represent occupational conditions at shipper and carrier facilities, in which workers manually handled many packages throughout the year. These exposure conditions are much greater than the public would experience from brief exposure to packages in transport. The values also exceed real occupational resuspension rates and exposure times and were believed to result in worker doses that would be well within the annual occupational dose limit. Exposure at the contamination limit does not pose a significant health hazard to workers. Therefore, members of the public, few of whom would ever be expected to encounter contaminated packages in transit, and then only briefly, are also protected against contamination hazards by the limit.

TS–R–1 further provides that in transport, ''* * * the magnitude of individual doses, the number of persons exposed, and the likelihood of incurring exposure shall be kept as low as reasonable, economic and social factors being taken into account * * *'' The IAEA contamination regulations have been applied to radioactive material packages in international commerce for almost 40 years, and practical experience demonstrates that the regulations can be applied successfully. With respect to contamination limits, TS–R–1 contains no changes from previous versions of IAEA's regulations.

Part 71 does not contain contamination limits, but § 71.87(i) requires that licensees determine that the level of removable contamination on the external surface of each package offered for transport is as low as is reasonably achievable, and within the limits specified in DOT regulations in 49 CFR 173.443. The DOT contamination limits differ from TS–R–1 in that the contamination limits apply to the wipe material used to survey the surface of the package, not the surface itself. Also, the contamination limits are only 10 percent of the TS–R–1 values (e.g., wipe limit of 0.4 Bq/cm^2 (2200 dpm/100 cm^2) for beta and gamma and low toxicity alpha emitting radionuclides), because the DOT limits are based on the assumption that the wipe removes 10 percent of the surface contamination. In this regard, the DOT and TS–R–1 limits are equivalent.

The DOT contamination regulations contain an additional provision for which there is no counterpart in TS–R–1. Section 173.443(b) provides that, for packages transported as exclusive use (see 49 CFR 173.403 for exclusive use definition) shipments by rail or public highway only, the removable contamination on any package at any time during transport may not exceed 10 times the contamination limits (e.g., wipe contamination of 4 Bq/cm^2 (22,000 dpm/100 cm^2) for beta and gamma and low toxicity alpha emitting radionuclides). In practice, this means that packages transported as exclusive use shipments (this includes spent fuel packages) that meet the contamination limits at shipment departure may have 10 times that contamination upon arrival at the destination. This provision is intended to address a phenomenon known as ''cask-weeping,'' in which surface contamination that is nonremovable at the beginning of a shipment becomes removable during the course of the shipment. Nonremovable contamination is not measurable using wipe surveys and is not subject to the removable contamination limits. At the destination facility, a package exhibiting cask-weeping can exceed the contamination limits by a considerable margin, even though the package met the limits at the originating facility, and was not subjected to any further contamination sources during shipment. Environmental conditions are believed to affect the cask-weeping phenomenon.

Spent fuel packages and shipments differ from those considered in the 1961 model used to develop package surface contamination limits. Workers are exposed to only a few spent fuel packages per year at most, so their exposure time to package contamination is less than that modeled. Unlike the packages in the model, however, spent fuel package surface areas and radiation levels are significant. Exposure to the package radiation level while performing either contamination survey or decontamination activities contributes to worker dose, and this impact was not considered in the model.

The IAEA has plans to establish a Coordinated Research Project (CRP) to review contamination models, approaches to reduce package contamination, strategies to address cask-weeping, and possible recommendations for revisions to the contamination standard that consider risks, costs, and practical experience. IAEA establishes CRPs to facilitate investigation of radioactive material transportation issues by key IAEA Member States. IAEA will then consider a CRP report and any further actions or remedies that may be warranted at periodic meetings (at TRANSSC). NRC informed IAEA that NRC supports the IAEA initiative to establish the CRP and that NRC would participate in the IAEA review of surface contamination standards.

Discussion. During the three public meetings, NRC has received verbal public comments on the contamination issue. One commenter agreed that external contamination on packages of radioactive material in transport is a significant problem and is the source of actual or perceived hazard that can cause damage to the nuclear industry. The commenter would prefer not to change contamination limits (i.e., continuing to use TS–R–1 limits) unless there is a sound technical basis for doing so.

NRC was requested to clarify its discussion of the 4 Bq/cm^2. The commenter stated that the current limit for removable contamination levels in 49 CFR 173.443 is 0.4 Bq/cm^2 before shipment, unless an assessment method with higher efficiency is used, in which case the limit may be as high as 10 times 0.4 Bq/cm^2 (i.e., 4 Bq/cm^2) (22,000 dpm/100 cm^2).

Four commenters stated they understood that existing surface contamination limits (i.e., 4 Bq/cm^2) (2200 dpm/100 cm^2) were intended for small and not large packages and that using the limit for large packages, while it may reduce public exposure rates, would conceivably increase worker exposure rates. Another commenter added that worker exposure could actually increase when double containment is required, and expressed concern about how this issue with contamination limits impacts international shipments. Some commenters stated that it was doubtful that worker exposure rates could be reduced, even if allowable surface contamination rates were significantly increased.

Several commenters addressed the issue that workers would be exposed to radiation while measuring the surface contamination level. Three of the commenters acknowledged that this is true regardless of the level of the package contamination limit. Two commenters suggested that NRC consider other ways to protect workers, including cask design. Another commenter stated that if the radiation is

too great for workers to get close enough to measure it, it is too great to transport it.

Absent public objection to the current standard and an overall significantly improved approach, NRC is planning no revisions to Part 71 regarding surface contamination in this proposed rule. The NRC intends to use the information it collects from public comments on this issue to continue to support DOT in U.S. participation in the IAEA CRP and to work with DOT and other IAEA Member States on this issue. Because IAEA has adopted a 2-year revision cycle for TS–R–1, a revision based on the CRP's results could be incorporated into TS–R–1 more quickly than under the previous 10-year revision cycle.

NRC Proposed Position. The NRC proposes no changes to Part 71 for this issue.

Affected Sections. None (not adopted).

Issue 19. Modifications of Event Reporting Requirements

Background. The Commission recently issued a final rule to revise the event reporting requirements in 10 CFR Part 50 (see 65 FR 63769; October 20, 2000). This final rule revised the verbal and written event notification requirements for power reactor licensees in §§ 50.72 and 50.73. In SECY–99–181,[18] NRC staff informed the Commission that public comments on the proposed Part 50 rule had suggested that conforming changes also be made to the event notification requirements in Part 72 (Licensing Requirements for the Independent Storage of Spent Fuel) and Part 73 (Physical Protection of Plants and Materials). In response, the Commission directed the NRC staff to study whether conforming changes should be made to Parts 72 and 73. During this study, the NRC also reviewed the Part 71 event reporting requirements in § 71.95, and concluded that similar changes could be made to the Part 71 event reporting requirements.

Discussion. This issue was not included in the Part 71 Issues Paper (65 FR 44360; July 17, 2000). Therefore, there were no public comments on this issue.

The current regulations in § 71.95 require that a licensee submit a written report to the NRC within 30 days of three events: (1) A significant decrease in the effectiveness of a packaging while it is in use to transport radioactive material; (2) details of any defects with safety significance found after first use of the cask; and (3) failure to comply with conditions of the CoC during use.

The NRC has identified three principal concerns with the existing requirements in § 71.95. First, the existing requirements only apply to licensees and not to certificate holders. Second, the existing requirements do not contain any direction on the content of these written reports. Third, inconsistencies existed in reporting time frames as a result of the Commission decision in the October 20, 2000, final rule which reduced the reporting burden on reactor licensees in the Part 50 final rule by changing the time for submittal of written reports from 30 days to 60 days.

With respect to the first concern, NRC believes that events involving a significant reduction in effectiveness of a packaging during its use to transport radioactive material may call into question the design bases for the packaging. Examples of a significant reduction in effectiveness might involve an event that causes a package to exceed the 2-mSv per hour (200-mrem per hour) dose limit or exceed the Type B package requirements of § 71.51. In these cases, the cause of the reduction in effectiveness may be due to a design flaw. Because the certificate holder has the most in-depth understanding of the design basis for a packaging, the NRC believes that it is appropriate for the certificate holder to work with the licensee to jointly determine the root cause(s) for an event that resulted in a significant decrease in packaging effectiveness. Similarly, identification of safety-significant defects after first use of a packaging may reveal flaws with the packaging's basic design. Therefore, the NRC would revise § 71.95 to require that the licensee request certificate holder input before submitting a written report for the criteria in new paragraphs (a)(1) and (a)(2). The licensee would also be required to provide the certificate holder with a copy of the written event report, after the report is submitted to the NRC. This would permit the certificate holder to monitor and trend package performance information arising from package use by multiple licensees. In new paragraph (a)(3), the NRC would retain the existing requirement for licensees to report instances of failure to follow the conditions of the CoC while a packaging was in use.

With respect to the second concern, NRC believes that direction should be provided on the expected contents of these written reports. Currently, no direction is provided to licensees on the form or content of these written reports. The NRC believes that standards for the contents of written reports should be unambiguous. The NRC uses this information to determine if inspection and enforcement follow-up is required for the event or if a generic safety issue exists. Consequently, sufficient information must be provided to the NRC to fulfill its responsibilities to protect public health and safety and the environment. Therefore, NRC would add new paragraphs (c) and (d) to § 71.95 which would provide guidance on the content of these written reports. This new requirement is consistent with the written report requirements for Parts 50 and 72 licensees (i.e., §§ 50.73 and 72.75) and the direction from the Commission in SECY–99–181 to consider conforming event notification requirements to the recent changes made to Part 50. The NRC would also update the submission location for the written reports from the Director, Office of Nuclear Material Safety and Safeguards, to the NRC Document Control Desk. This action is consistent with previous Commission direction to standardize the location for incoming documents and correspondence and would bring Part 71 into greater conformity with Parts 50 and 72. Additionally, the NRC would remove the specific location for submission of written reports from § 71.95(c) and require that reports be submitted in accordance with § 71.1. This action is also consistent with the approach taken in Parts 50 and 72 and would reduce future NRC burden should the submission address change. This proposed change to § 71.1 is identical to a change made to § 72.4 in a recent Part 72 final rule (see 64 FR 33178; June 22, 1999).

With respect to the third concern, the NRC staff believes that lengthening the period for submitting reports from 30 days to 60 days would reduce the burden on licensees, while still providing the staff with the necessary information to fulfill the NRC's mission. The NRC uses written event reports for trending, analysis, and long-term follow-up of a licensee's corrective actions. In contrast, immediate reporting of events to the NRC provides indication of significant events when immediate action to protect public health and safety may be required or where the NRC needs timely and accurate information to respond (see 48 FR 39039; August 29, 1983, on the basis for Part 50 event reporting). For transportation events, the NRC receives early notification in the NRC's Operations Center either from a

[18] SECY–99–181, ''Proposed Plans and Schedules to Modify Reporting Requirements Other than 10 CFR 50.72 and 50.73 for Power Reactors and Material Licensees,'' dated July 9, 1999.

licensee, when a licensee declares an emergency under its emergency plan, for a transportation event, or from DOT's National Response Center, when a shipper notifies DOT of an accident involving radioactive material. Consequently, extending the submission time for written event reports to 60 days would not adversely affect the NRC's ability to promptly respond to an event, because these written reports are not used as the basis for immediate or short term actions.

The Commission concluded in the October 20, 2000 (65 FR 63769), final rule revising Part 50 event reporting requirements that the length of time to submit a written report should be extended to permit a thorough evaluation of the event, identification of the root causes, and development of corrective actions. The Commission also indicated that a licensee's submission of written reports should not be unnecessarily delayed to take advantage of the full 60-day period. The NRC took this action because some events required a significant amount of time to evaluate the event, identify the root causes, and identify the corrective actions; and consequently, a supplemental written event report was necessary. In addition, a 60-day period is more consistent with the NRC's desire that the licensee and the certificate holder both be involved in the analysis of an event. The Commission indicated that the licensee's burden, in submitting a supplemental written event report, would be reduced by providing sufficient time to complete the original written event report.

The NRC staff believes the Commission's rationale for lengthening the reporting period from 30 days to 60 days for Part 50 written event reports is also valid for Part 71 written event reports.

The NRC draft RA indicates that adoption of the conforming change to Part 71 for event reporting requirements is appropriate from a safety, regulatory, and cost perspective. Regulatory efficiency within NRC would increase with adoption of this proposed change and would result in greater conformity among Parts 50, 71, and 72. Further, NRC burden (and thus costs) would be reduced should the submission address change in the future. There would be a one-time implementation cost for licensees for revising procedures and for training. A key benefit of the proposed amendments would be a reduction in the recurring annual reporting burden on licensees, as a result of reducing the efforts associated with reporting events of little or no risk or safety significance. It is anticipated that the NRC's recurring annual review efforts for telephone notifications and written reports would not be significantly reduced.

NRC Proposed Position. The NRC proposes a reduction in regulatory burden for licensees by lengthening the § 71.95 event reporting submission period from 30 to 60 days.

Affected Sections. § 71.95.

V. Section-by-Section Analysis

Several sections In Part 71 would be redesignated in this rulemaking to improve consistency and ease of use. For some sections, only the section number would be changed. However, for other sections, revisions would also be made to the regulatory language. The following table is provided to aid the public in understanding the proposed numerical changes to sections of Part 71.

REDESIGNATION TABLE

New section number	Existing section number
§ 71.8	§ 71.11
§ 71.9	New section
§ 71.10	New section
§ 71.11 (Reserved)	NA
§ 71.12	§ 71.8
§ 71.13	§ 71.9
§ 71.14	§ 71.10
§ 71.15	§ 71. 53
§ 71.16 (Reserved)	NA
§ 71.17	§ 71.12
§ 71.18	New section
§ 71.19	§ 71.13
§ 71.20	§ 71.14
§ 71.21	§ 71.16
§ 71.22	§ 71.18
§ 71.23	§ 71.20
§ 71.24 (Reserved)	§ 71.22 (Section removed)
§ 71.25 (Reserved)	§ 71.24 (Section removed)
§ 71.53 (Reserved)	§ 71.53 (Section redesignated)

Subpart A—General Provisions

10 CFR 71.0 Purpose and Scope

Paragraph (d) would be reformatted into four paragraphs to simplify this regulation, to better use plain language, and to reflect the existence of the new Type B(DP) package approval process in new Subpart I. Paragraph (d)(1) would indicate that general licenses for which no NRC package approval is required are issued in new §§ 71.20 through 71.23. This is changed from the current sentence, because of the removal of existing §§ 71.22 and 71.24 (redesignated §§ 71.24 and 71.25). A new sentence would be added referring to the requirement for a CoC to be issued for a Type B(DP) package to be used under the new general license in new § 71.18. Paragraph (d)(2) would indicate that an application for package approval—for package types other than Type B(DP)—must be completed in accordance with Subpart D. Paragraph (d)(3) would indicate that an application for a Type B(DP) package must be completed in accordance with Subpart I. Paragraph (d)(4) would continue to require a licensee transporting, or delivering material to a carrier for transport, to meet the requirements of the applicable portions of Subparts A, G, and H.

New paragraph (e) would be added to indicate that persons who hold, or apply for, a Part 71 CoC for Type AF, Type B, Type BF, Type B(U)F, Type B(M)F, and Type B(DP) packages are within the scope of Part 71 regulations.

Existing paragraphs (e) and (f) would be redesignated as new paragraphs (f) and (g), respectively. The rule text in new paragraph (f) would be the same as existing paragraph (e) text. New paragraph (g) would be revised to reflect the redesignation of existing § 71.11 as new § 71.8.

10 CFR 71.1 Communications and Reports

In § 71.1, paragraph (a) would be revised to indicate that documents submitted to the NRC should be addressed to the attention of the ''Document Control Desk,'' not the ''Director of the Office of Nuclear Material Safety and Safeguards.'' Provisions would also be added to provide requirements when a due date for a document falls on a Saturday, Sunday, or Federal holiday. In that case, the document would be due the next Federal work day. This change would be identical to a change made to § 72.4 in a recent Part 72 final rule (see 64 FR 33178; June 22, 1999).

10 CFR 71.2 Interpretations

No changes were made to the text of this section; however, it is included in the revision of this subpart for completeness.

10 CFR 71.3 Requirement for License

No changes were made to the text of this section; however, it is included in the revision of this subpart for completeness.

10 CFR 71.4 Definitions

The existing definitions for A1, Fissile material, Low Specific Activity (LSA) material, Package, and Transport index (TI) would be revised as conforming changes. New definitions for A_2, Certificate of Compliance, Criticality Safety Index (CSI), Deuterium, DOT, Graphite, Spent fuel, and Structures,

systems, and components important to safety would be added as conforming changes.

The definition of A_1 would be revised to split the current combined definition for A_1 and A_2 into two individual definitions. This approach is consistent with standard in TS–R–1. Furthermore, no change would be made to the current technical content of the definition for A1; however, the text would be revised to improve readability.

A definition for A_2 would be added, because the current joint definition for A_1 and A_2 would be split into two definitions. [See also definition for A_1.]

A definition for Certificate of Compliance would be added. This definition would be similar to the definition for the same term found in § 72.3.

A definition of Criticality Safety Index (CSI) would be added.

A definition of Deuterium would be added to indicate that, for the purposes of new §§ 71.15 and 71.22, the definition of ''deuterium'' found in 10 CFR 110.2 applies.

A definition of U.S. Department of Transportation (DOT) would be added.

The definition of Fissile material would be revised by removing ^{238}Pu from the list of fissile nuclides; clarifying that ''fissile material'' means the fissile nuclides themselves, not materials containing fissile nuclides; and redesignating the reference to exclusions from fissile material controls from § 71.53 to new § 71.15.

A definition of Graphite would be added to indicate that, for the purposes of new §§ 71.15 and 71.22, the definition of Nuclear grade graphite found in § 110.2 applies.

The definition of Low Specific Activity (LSA) material , for LSA–III material, would be revised to reflect the existence of § 71.77 (§ 71.77 provides requirements on the qualification of LSA–III material).

The definition of Package would be revised by clarifying in paragraph (1) that Fissile material package also means a Type AF, Type BF, Type B(U)F, or Type B(M)F package. New paragraph (2) would be added defining Type A packages in accordance with DOT regulations contained in 49 CFR Part 173. Existing paragraph (2) defining Type B packages would be redesignated as paragraph (3). No changes would be made to the redesignated text. New paragraph (4) would be added defining a Type B(DP) package.

A definition of Spent nuclear fuel or Spent fuel would be added. This definition is the same as that currently found in § 72.3.

A definition for Structures, systems, and components important to safety would be added for Type B(DP) packages. This definition would be similar to the definition currently found in § 72.3.

The definition for Transport index (TI) would be revised to reflect the new definition of Criticality Safety Index; however, the method for determining the TI of a package, based on the package's radiation dose rate, would remain unchanged.

10 CFR 71.5 Transportation of Licensed Material

No changes were made to the text of this section; however, it is included in the revision of this subpart for completeness.

10 CFR 71.6 Information Collection Requirements: OMB Approval

This section would be redesignated from Subpart B—Exemptions, to Subpart A—General Provisions. Paragraph (b) of this section would be revised as a conforming change to reflect the addition of new information collection requirements in §§ 71.18, 71.151, 71.153, 71.155, 71.157, 71.159, 71.161, 71.165, 71.167, 71.171, 71.173, 71.175, and 71.177. Additionally, the existing information collection requirement in Appendix A to Part 71, Paragraph II, was inadvertently omitted from the list of approved information collection requirements in a previous rulemaking; consequently, NRC staff would add Appendix A, Paragraph II, to paragraph (b) to correct this error. Furthermore, § 71.6a would be removed, because no such section currently exists in Part 71.

10 CFR 71.7 Completeness and Accuracy of Information

This section would be redesignated from Subpart B—Exemptions, to Subpart A—General Provisions. Further, paragraphs (a) and (b) would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.8 Deliberate Misconduct

This section would be redesignated from Subpart B—Exemptions, to Subpart A—General Provisions. Further, in Subpart A, § 71.11 would be redesignated as § 71.8. However, the current text of § 71.11 would not be changed in the redesignated § 71.8.

10 CFR 71.9 Employee Protection

New § 71.9 would be added to provide requirements on employee protection. Currently, requirements relating to the protection of employees against firing or other discrimination when the employee engages in certain ''protected activities'' are provided under the Parts of Title 10 for which a specific license was issued to possess radioactive material. However, no provisions were provided in Part 71 relating to the protection of employees against firing or other discrimination when employees engage in certain ''protected activities'' when they are the employees of a certificate holder or applicant for a CoC. The NRC believes these employees should also be afforded the same rights and protection as are currently afforded employees of licensees. The new section would be identical to the existing § 72.10, ''Employee protection.'' In including licensees in the new § 71.9, the NRC recognizes that the potential for duplication occurs for licensees regulated under multiple 10 CFR Parts. However, the NRC believes that by including licensees along with certificate holders and applicants for a CoC, improved regulatory clarity would be achieved, and any potential confusion would be minimized.

10 CFR 71.10 Public Inspection of Application

A new section would be added indicating that applications and documents submitted to the Commission in connection with an application for a package approval shall be available for public review in accordance with the provisions of 10 CFR Parts 2 and 9. This new section would be similar to existing § 72.20. Existing § 71.10 would be redesignated § 71.14 with changes to the text.

10 CFR 71.11 (Reserved)

This section would be redesignated from Subpart B—Exemptions, to Subpart A—General Provisions, and would be reserved. Existing § 71.11 would be redesignated as § 71.8.

Subpart B—Exemptions

10 CFR 71.12 Specific Exemptions

Existing § 71.8 would be redesignated as § 71.12. No changes would be made to the contents of this section. Existing § 71.12 would be redesignated as § 71.17, with changes to the text as discussed under § 71.17, below.

10 CFR 71.13 Exemption of Physicians

Existing § 71.9 would be redesignated as § 71.13. No changes would be made to the contents of this section. Existing § 71.13 would be redesignated as § 71.19, with changes to the text as discussed under § 71.19, below.

10 CFR 71.14 Exemption for Low-Level Materials

Existing § 71.10 would be redesignated as § 71.14. Existing § 71.14 would be redesignated as § 71.20, with no changes to the text.

In new § 71.14, paragraph (a) would be revised by removing the existing single 70 Bq/g (0.002 μCi/g) specific activity value and replacing it with ''Activity Concentration for Exempt Material'' found in Table A–2 in Appendix A to Part 71. Additionally, paragraph (a) would be reformatted by adding two new paragraphs. Paragraph (a)(1) would provide an exemption for natural radioactive materials and ores. Paragraph (a)(2) would provide an exemption for radioactive material based on its specific activity, not based on the material being in a package.

Paragraph (b) would be revised to consolidate the exemption provisions for LSA and SCO material. The LSA and SCO exemptions contained in existing paragraphs (b)(2) and (c) of this section would be consolidated into a revised paragraph (b)(3), and existing paragraph (c) would be removed. The reference to material exempt from classification as fissile material would be revised from § 71.53 to § 71.15, because of the redesignation of the section.

Existing paragraph (b)(3) would be removed. The 0.74–TBq (20–Ci) exemption for special form americium and special form plutonium would be removed. However, the 0.74–TBq (20–Ci) exemption for special form plutonium-244, transported in domestic commerce, would be retained as new paragraph (b)(2). Furthermore, an exception would be added to paragraph (b)(1) indicating that paragraph (b)(1) does not apply to a package containing greater than an A1 quantity of special form plutonium-244 transported in domestic commerce. For international shipments, the A1 quantity limit for special form plutonium-244 would continue to apply.

10 CFR 71.15 Exemption From Classification as Fissile Material

Existing § 71.11 would be redesignated to § 71.8. Existing § 71.53 would be redesignated as § 71.15, and relocated to Subpart B with the other Part 71 exemptions. This section would be revised by providing mass-ratio based limits in classifying fissile-exempt material. This approach would remove the concentration- and consignment-based limits of the current § 71.53 and return to package-based mass limits, with required minimum ratios of nonfissile-to-fissile mass.

The title would be changed to ''Exemption from classification as fissile material.''

New paragraphs (a) and (b) would be added and would allow for increasing quantities of fissile material to be shipped, would provide a concurrent increase in the required mass ratio to ensure criticality safety, and would allow shipment of fissile material in bulk packaging (i.e., large freight containers). The nonfissile material would be limited to noncombustible material which is insoluble in water. In paragraph (a), the fissile mass per package would be limited to 15 grams with a nonfissile-to-fissile mass ratio of 200:1, and the nonfissile material would be restricted to iron. In paragraph (b), the allowed fissile mass is raised to 350 grams per package, but the ratio of nonfissile-to-fissile material is also raised to 2000:1. The mass of any lead, graphite, beryllium, and deuterium in the package cannot be included in determining the nonfissile material mass, and the nonfissile material that is counted in the ratio must be noncombustible and insoluble in water.

Current § 71.53, paragraph (b), would be redesignated as paragraph (c), and would be revised to limit beryllium, graphite, and hydrogenous material enriched in deuterium to less than 0.1 percent of the fissile material mass. The current homogenous distribution and lattice requirements would be removed.

Current § 71.53, paragraph (c), would be redesignated as paragraph (d), and would be reformatted and revised to clarify that the nitrogen to uranium atomic ratio, for shipments of liquid uranyl nitrate, must be greater than or equal to 2.0. A new requirement would be added specifying the use of DOT Type A packaging.

Current § 71.53, paragraph (d), would be redesignated as paragraph (e), and would be reformatted and revised to clarify the mass limits for plutonium. No substantive changes would be made to this paragraph.

10 CFR 71.16 (Reserved)

This section would be redesignated from Subpart C—General Licenses, to Subpart B—Exemptions, and would be reserved. Further, existing § 71.16 would be redesignated as § 71.21. However, the current text of § 71.16 would not be changed in the redesignated § 71.21.

Subpart C—General Licenses

Section 71.17 General license: NRC-Approved package

Existing § 71.12 would be redesignated as § 71.17. Paragraph (a) would be revised as a conforming change to indicate that this general license does not apply to Type B(DP) packages.

Paragraph (c)(3) would be revised using plain language, and to reflect the NRC's requirement to address information submitted to the NRC to the attention of the NRC's Document Control Desk, in accordance with § 71.1.

10 CFR 71.18 General License: NRC-Approved Type B(DP) Package

This new section would be added to provide a general license for the transportation of spent fuel in Type B(DP) packages. The structure of this new section would be similar to the existing § 71.12(a) through (d).

10 CFR 71.19 Previously Approved Package

Existing § 71.13 would be redesignated as § 71.19. Paragraph (a) would be revised to reflect the current package designators (e.g., B(U)F, B(M)F, AF). Additionally, the contents of paragraph (a)(2) would be removed to reflect that these packages are no longer recognized internationally. Existing paragraph (a)(3) would be redesignated as (a)(2) with no change to the contents. Also, an expiration date for grandfathering these packages would be established. Paragraph (b) would be updated to remove the LSA packages, as these packages no longer exist. A new paragraph (c) would be added to reflect the type B(U) and B(M) packages that have met the requirements of IAEA Safety Series 6 1985 (as amended 1990). Additionally, a date by which fabrication of these packages must be complete would be added. Existing paragraph (c) would be redesignated as paragraph (d). Existing paragraph (d) would be redesignated as paragraph (e), and updated to reflect the identification number suffix of ''-96'' for previously approved package designs that have been resubmitted for review by the NRC and have been approved, and to remove the package designated as Type A from this paragraph.

10 CFR 71.20 General License: DOT Specification Container

Existing § 71.14 would be redesignated as § 71.20. No changes would be made to the contents of this section.

10 CFR 71.21 General License: Use of Foreign Approved Package

Existing § 71.16 would be redesignated as § 71.21. No changes would be made to the contents of this section.

10 CFR 71.22 General License: Fissile Material

Existing § 71.18 would be redesignated as § 71.22. This section would be amended by consolidating and simplifying the current fissile general license provisions contained in existing §§ 71.18, 71.20, 71.22, and 71.24 into a new § 71.22. The new § 71.22, while retaining some of the provisions of the existing general licenses, would principally use mass-based limits and a CSI. Concentration-based limits would be removed. Exceptions relating to plutonium-beryllium sealed sources in existing §§ 71.18 and 71.22 would be relocated to new § 71.23. The values contained in new Tables 71–1 and 71–2 would be revised from the values contained in the table in existing § 71.22 and in Table 1 in existing § 71.20, respectively; and are based on new minimum critical mass calculations described in NUREG/CR–5342. In some instances, the allowable mass limit has been increased from the current limits in existing §§ 71.18, 71.20, 71.22, and 71.24; in other instances, the allowable mass limit has been reduced. The values contained in new Tables 71–1 and 71–2 would be used as the variables X, Y, and Z in the equation in paragraph (e).

The title would be revised to indicate that this general license is not restricted to a specific type of fissile material shipment.

Paragraph (a) would be revised to require that fissile material shipped under this general license would be contained in a DOT Type A package. Additionally, while the existing exception from Subparts E and F requirements is maintained, the DOT Type A package regulations of 49 CFR Part 173 would also be specified.

Paragraph (b) would remain unchanged.

Paragraph (c) would be revised to remove the specific gram limits for uranium and plutonium, but would retain the existing Type A quantity limit. Revised gram limits would be relocated to new Table 71–1, which would be associated with new paragraphs (d) and (e). A requirement would also be added to limit the amount of special moderating materials beryllium, graphite, and hydrogenous material enriched in deuterium present in a package to less than 500 g.

Existing paragraph (d) would be removed. Revised gram limits for fissile material mixed with material having a hydrogen density greater than water (i.e., a moderating effectiveness greater than H_2O) would be placed in new Table 71–1. A note would be added to new Table 71–1 to indicate that reduced mass limits apply when more than 15 percent of a mixture of moderating materials contains moderating material with a hydrogen density greater than H_2O.

New paragraph (d) would be added to require that shipments of packages containing fissile material be labeled with a CSI, that the CSI per package be less than or equal to 10.0, and that the sum of the CSIs in a shipment of multiple fissile material packages would be limited to less than or equal to 50.0 for a nonexclusive use conveyance, and to less than or equal to 100.0 for an exclusive use conveyance.

Existing paragraphs (e) and (f) would be removed.

New paragraph (e) would be added to require that the CSI be calculated via a new equation for any of the fissile nuclides. Guidance on applying the equation and the mass limit input values of Tables 71–1 and 71–2 would also be contained in this paragraph.

10 CFR 71.23 General License: Plutonium-Beryllium Special Form Material

The existing § 71.20, ''General license: Fissile material, limited moderator per package,'' would be removed. A new section on the shipment of plutonium-beryllium (Pu-Be) special-form fissile material (i.e., sealed sources) would be added as a new § 71.23. New § 71.23 would consolidate regulations on shipment of Pu-Be sealed sources contained in existing §§ 71.18 and 71.22 into one location in Part 71 and would use an approach consistent with the revised § 71.18. The § 71.23 would reduce the maximum quantity of fissile plutonium Pu-Be sealed sources that could be shipped on a single conveyance through changes in the mass limits and calculation of the CSI. Currently, a Pu-Be sealed source package can contain up to 400 g of fissile plutonium with a CSI equal to 10.0. Consequently, the current conveyance limits are 4,000 g per shipment for an exclusive-use vehicle and 2000 g per shipment for a nonexclusive use vehicle. The new § 71.23 would increase the maximum CSI per package from 10 to 100; however, the maximum quantity of plutonium per conveyance (i.e., shipment) would be reduced to 1000 g. The 1000 g per shipment limit and a 240 g of fissile plutonium limit are equivalent to those in new § 71.22(f) (1,000 g per shipment and 200 g of fissile plutonium). The 240 g versus 200 g of fissile plutonium per package is due to the increased confidence that the fissile plutonium within a sealed source capsule would not escape from the capsule during an accident and reconfigure itself into an unfavorable geometry.

New § 71.23 would be titled: ''General license: Plutonium-beryllium special form material.''

Paragraph (a) would describe the applicability of this section, exceptions to the requirements of Subparts E and F, and the requirement to ship Pu-Be sealed sources in DOT Type A packages.

Paragraph (b) would require that shipments of Pu-Be sealed sources be made under an NRC-approved QA program.

Paragraph (c) would require a 1,000 g per package limit. In addition, plutonium-239 and plutonium-241 may constitute only 240 g of the 1,000 g limit.

Paragraph (d) would require that a CSI be calculated per paragraph (e), and the CSI must be less than or equal to 100.0. For shipments of multiple packages, the sum of the CSIs would be limited to less than or equal to 50.0 for a nonexclusive use conveyance, and to less than or equal to 100.0 for an exclusive use conveyance.

Paragraph (e) would provide an equation to calculate the CSI for Pu-Be sources. This equation would be based upon the 240 g mass limit for fissile nuclide plutonium-239 and plutonium-241 in paragraph (c).

10 CFR 71.24 (Reserved)

10 CFR 71.25 (Reserved)

Existing §§ 71.22 and 71.24 would be redesignated as §§ 71.24 and 71.25. New §§ 71.24 and 71.25 would be removed and reserved.

Subpart D—Application for Package Approval

10 CFR 71.41 Demonstration of Compliance

Paragraph (a) would be revised to require that a Type B package which contains radioactive contents with activity greater than 10^5 A_2 of any radionuclide must meet the enhanced deep immersion test found in § 71.61. A new paragraph (d) would be added to provide special package authorizations.

10 CFR 71.51 Additional Requirements for Type B Packages

Paragraph (a) would be revised to remove the reference to § 71.52, because the requirements of § 71.52 have expired. Paragraph (d) would be added to require that, for other than Type B(DP) packages, a package which contains radioactive contents with activity greater than 10^5 A_2 of any radionuclide must also meet the

enhanced deep immersion test found in § 71.61.

10 CFR 71.53 Fissile Material Exemptions (Reserved)

This section would be removed and reserved; its contents would be moved to § 71.15.

10 CFR 71.55 General Requirements for Fissile Material Packages

New paragraphs (f) and (g) would be added. Paragraph (f) would specify design and testing for fissile material package design for transport by aircraft, and paragraph (g) would address UF_6 criticality exception from § 71.55(b). Additionally, as a conforming change, paragraph (b) would be updated to support new paragraph (g).

10 CFR 71.59 Standards for Arrays of Fissile Material Packages

Paragraphs (b) and (c) would be revised to use the term CSI (criticality safety index).

Paragraph (b) would be revised to refer to a CSI rather than a TI for nuclear criticality control. The method for calculating a CSI would be the same as the existing method for a TI for nuclear criticality control.

Paragraph (c) of this section would be revised to provide direction to licensees when the CSI is exactly equal to 50.0, and to use plain language. Subparagraph (1) Would be revised by replacing the term ''[n]ot in excess of 10,'' with the term ''[l]ess than or equal to 50.0,'' and would provide for storage incident to transport. New paragraph (c)(2) would be added to provide for shipment of packages with a CSI of less than 50.0 on an exclusive use conveyance. The current conveyance limit of 100 would be retained. Existing paragraph (c)(2) would be redesignated as new paragraph (c)(3) and would be revised by replacing the term ''[i]n excess of 10,'' with the term ''[g]reater than 50.0.'' These three changes would: (1) Provide greater clarity and mathematical consistency among paragraphs (c)(1), (c)(2), and (c)(3); (2) clarify the CSI limits for storage incident to transport; and (3) increase the CSI limit per package from 10 to 50 for shipments made with nonexclusive use conveyances.

10 CFR 71.61 Special Requirements for Type B Packages Containing More Than 10^5 A_2

This section would be revised to require an enhanced water immersion test for packages used for radioactive contents with activity greater than 10^5 A_2. The title of this section would also be revised to reflect that the scope has been broadened beyond irradiated nuclear fuel.

10 CFR 71.63 Special Requirement for Plutonium Shipments

The title would be revised to reflect only a single ''requirement'' rather than multiple requirements.

Paragraph (b) would be removed.

The designation of the remaining text as paragraph (a) would be removed, because only one paragraph would remain. The text of former paragraph (a) would be revised to use plain language. The 0.74–TBq (20–Ci) limit and solid form requirement would be retained.

10 CFR 71.73 Hypothetical Accident Conditions

A new paragraph (c)(2) is added to require a crush test for fissile material packages.

10 CFR 71.88 Air Transport of Plutonium

Paragraph (a)(2) would be revised to remove the 70–Bq/g (0.002–μCi/g) specific activity value and substitute activity concentration values for plutonium found in Appendix A, Table A–2, of this part. This revision would be a conforming change to the revision to new § 71.14 to ensure consistent treatment of plutonium between these two sections.

Subpart G—Operating Controls and Procedures

10 CFR 71.91 Records

As a conforming change to Subpart H, paragraphs (b) and (c) would be redesignated as paragraphs (c) and (d), respectively, and would be revised by adding the terms certificate holder and applicant for a CoC. New paragraph (b) would be added to require a certificate holder to keep records on the model, serial number, and date of manufacture of a packaging. These requirements are similar to the requirements in paragraph (a), though less information is required. No change would be made to paragraph (a).

10 CFR 71.93 Inspection and Tests

As a conforming change to Subpart H, paragraphs (a) and (b) would be revised by adding the terms certificate holder and applicant for a CoC. Paragraph (c) would be revised to require the certificate holder to notify the NRC before it begins fabrication of a packaging that can contain material having a decay heat load in excess of 5 kW or a maximum normal operating pressure of 103 kPa [kilo Pascals] (15 lbf/in^2) gauge. This notification could be for either fabricating a single packaging or the beginning of a campaign for fabricating multiple packagings. This notification would be in accordance with the requirements of § 71.1, rather than to an NRC Regional Administrator. This change in notification location is consistent with current Commission policy and would reduce confusion in identifying the appropriate Regional Administrator when the certificate holder and fabrication location are overseas. Licensees would be removed from this paragraph because the NRC believes that requiring a licensee, who does not own the packaging, to notify the NRC in advance of a packaging fabrication, when the licensee may not use the packaging for years, is inappropriate and an unreasonable burden. The NRC believes that requiring certificate holders and applicants for a CoC to notify the NRC in advance of fabricating a packaging(s) would allow the NRC adequate opportunity to inspect these activities. This change would be similar to the current requirement in § 72.232(d) for Part 72 certificate holders or applicants for a CoC to notify the NRC 45 days before starting the fabrication of the first storage cask under a part 72 CoC. This action would improve the harmonization between these two regulations in parts 71 and 72, particularly regarding dual-purpose casks (i.e., casks intended to both store and transport spent fuel).

10 CFR 71.95 Reports

The existing introductory text and paragraphs (a) and (b) would be combined into a new paragraph (a) which would require a licensee, after requesting the certificate holder's input, to submit a written report to the NRC in certain circumstances. The requirement for the licensee to request input from the certificate holder during development of the written event report would ensure that design deficiency issues have been thoroughly considered. The licensee would also be required to provide the certificate holder with a copy of the written event report, after the report is submitted to the NRC. This would permit the certificate holder to monitor and trend the package performance information, arising from package use by multiple licensees. Additionally, requirements on timing and submission location for the written reports would be relocated to new paragraph (c). Furthermore, the 30-day reporting requirement would be lengthened to a 60-day reporting requirement.

The existing paragraph (c) has been redesignated as paragraph (b) and revised for clarity.

New paragraphs (c) and (d) would be added to provide requirements on the timing, submission location, form, and content of the written reports.

10 CFR 71.100 Criminal Penalties

Section 223 of the Atomic Energy Act of 1954, as amended, [the Act] provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under sections 161b, 161i, or 161o of the Act. The Commission stated in a final rule on ''Clarification of Statutory Authority for Purposes of Criminal Enforcement'' (57 FR 55082; November, 24, 1992), that substantive rules under sections 161b, 161i, or 161o of the Act include those rules that create ''duties, obligations, conditions, restrictions, limitations, and prohibitions.'' For the NRC to consider the possibility of criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any substantive regulations, the NRC must have clearly identified to affected parties which regulations in Part 71 are substantive rules. Accordingly, paragraph (b) of this section identifies those Part 71 regulations that the NRC does not consider as substantive regulations. Thus, willful violation of, attempted violation of, or conspiracy to violate any of the regulations listed in paragraph (b) is not subject to possible criminal sanctions.

Paragraph (b) of this section would be revised as a conforming change. The NRC has reviewed new §§ 71.10, 71.151, 71.153, 71.155, 71.157, 71.159, 71.161, 71.163, 71.165, 71.167, and 71.169 and considers that these regulations are not substantive rules. Therefore, new §§ 71.10 and 71.151 through 71.169 would be added to the list of sections in paragraph (b). The NRC reviewed new §§ 71.9, 71.18, 71.23, 71.171, 71.173, 71.175, and 71.177, and considers that these regulations are substantive rules. Therefore, these sections would not be added to paragraph (b). Additionally, the NRC has reviewed the existing §§ 71.9, 71.10, and 71.53 and concluded these sections should be recharacterized as substantive rules. Therefore, new §§ 71.13, 71.14, and 71.18 would not be included in paragraph (b). Additionally, existing §§ 71.52 and 71.53 would be removed from paragraph (b), because these section numbers have been removed from part 71.

Subpart H—Quality Assurance

10 CFR 71.101 Quality Assurance Requirements

Paragraph (a) would be revised by adding two new sentences to the end of the paragraph specifying responsibilities for certificate holders and applicants for a CoC.

Paragraph (b) would be revised to add the terms ''certificate holder'' and ''applicant for a CoC.'' The second sentence would be revised to provide greater clarity and consistency within Subpart H by referring to ''the QA requirement's importance to safety.''

Paragraph (c) would be revised by redesignating the existing text as paragraph (c)(1), and new text would be added on submitting QA programs in accordance with the requirements of § 71.1. New paragraph (c)(2) would be added to provide equivalent requirements on the submission of QA programs for certificate holders and applicants for a CoC.

Paragraph (f) would be revised to allow the use of existing NRC-approved Part 71 and Part 72 QA programs, in lieu of submitting a new QA program. Additionally, the terms ''certificate holder'' and ''applicant for a CoC'' would be added.

Paragraph (g) would be revised by making a minor change to clarify that § 34.31(b) is located in Chapter I of Title 10 of the Code of Federal Regulations. Additionally, as a conforming change, § 71.12(b) would be redesignated as § 71.17(b).

10 CFR 71.103 Quality Assurance Organization

Paragraph (a) would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.'' Further, the fourth sentence would be revised to improve clarity and consistency within Subpart H and with Part 72, Subpart G, by referring to ''the functions of structures, systems, and components that are important to safety.''

10 CFR 71.105 Quality Assurance Program

Paragraphs (a) through (d) would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.107 Package Design Control

Paragraph (a) would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.'' Further, the last sentence would be revised to improve clarity and consistency within Subpart H by referring to ''processes that are essential to the functions of the materials, parts, and components that are important to safety.''

Paragraph (b) would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.'' Additionally, the last sentence would be revised by replacing the text ''[c]hanges in the conditions specified in the package approval require NRC approval. * * *'' with ''[c]hanges in the conditions specified in the CoC require NRC prior approval. * * *''

10 CFR 71.109 Procurement Document Control

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.111 Instructions, Procedures, and Drawings

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.113 Document Control

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.115 Control of Purchased Material, Equipment, and Services

Paragraphs (a) through (c) would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.117 Identification and Control of Materials, Parts, and Components

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.119 Control of Special Processes

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.121 Internal Inspection

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.123 Test Control

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.125 Control of Measuring and Test Equipment

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.127 Handling, Storage, and Shipping Control

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.129 Inspection, Test, and Operating Status

Paragraph (a) would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

Paragraph (b) would remain unchanged.

10 CFR 71.131 Nonconforming Materials, Parts, or Components

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.133 Corrective Action

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.135 Quality Assurance Records

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

10 CFR 71.137 Audits

This section would be revised by adding the terms ''certificate holder'' and ''applicant for a CoC.''

Subpart I—Application for Type B(DP) Package Approval

New Subpart I would be added to provide requirements on the application, review, approval, and amendment of a CoC for a Type B(DP) package. Requirements would also be provided on the submission and periodic updating of an FSAR. Additionally, requirements would be added authorizing a certificate holder to make minor changes to the design of a Type B(DP) package, without prior NRC approval, if certain tests were met. Further, identification would be made of which sections in Part 71 also apply to packages approved under this new subpart.

10 CFR 71.151 Procedures for Applying for a Type B(DP) Package Approval

This new section would describe the process for submitting an application to the NRC to request approval of a Type B(DP) package design. This section would be similar to § 72.230.

10 CFR 71.153 Contents of Application

This new section would provide requirements on what information must be contained in an application for a Type B(DP) package approval. This section would be similar to § 71.31.

10 CFR 71.155 Package Description

This new section would provide requirements on the description of a Type B(DP) package (both the packaging and its contents) which must be contained in an application for package approval. This section would be similar to § 71.33.

10 CFR 71.157 Package Evaluation

This new section would provide requirements which an application for a Type B(DP) package must demonstrate compliance with (i.e., sections in Subparts E and F). Additionally, because the Type B(DP) package is a fissile material package, the applicant would be required to: (1) Determine and provide the number ''N'' which is used in determining the maximum number of fissile packages on a conveyance; and (2) provide any special controls, precautions, or handling instructions. This section would be similar to § 71.35.

10 CFR 71.159 Quality Assurance

This new section would require a certificate holder to describe the quality assurance program, which meets the requirements of Subpart H of Part 71, that would be used to design, fabricate, test, repair, and modify a Type B(DP) package. This section would be similar to § 71.37.

10 CFR 71.161 Requirement for Additional Information

This new section would require a certificate holder to provide the Commission any information the NRC requires to determine if a CoC should be modified, suspended, or revoked. This section would be similar to § 71.39.

10 CFR 71.163 Issuance of an NRC Certificate of Compliance

This new section would provide direction to the NRC staff on criteria for approving a Type B(DP) CoC. This section would be similar to § 72.238.

10 CFR 71.165 Conditions for Package Reapproval

This new section would provide direction to a certificate holder who desires to renew a Type B(DP) CoC or a Part 71 QA program approval. This section would be similar to § 71.38.

10 CFR 71.167 Application To Amend a Certificate of Compliance

This new section would provide direction to a certificate holder who wishes to amend the CoC for a Type B(DP) package. This section would be similar to § 72.244.

10 CFR 71.169 Issuance of an Amendment to a Certificate of Compliance

This new section would provide direction to the NRC staff on issuance of an amendment to a Type B(DP) package CoC. This section would be similar to § 72.246.

10 CFR 71.171 Inspections and Tests

This new section would require a certificate holder to permit and to make provisions for NRC inspections at facilities used to design, fabricate, or test a Type B(DP) package. This section would also require a certificate holder to make records available and to perform tests the Commission deems necessary. This section would be similar to § 72.232.

10 CFR 71.173 Recordkeeping and Reports

This new section would provide requirements on submitting reports to the NRC and on maintaining records of fabricated Type B(DP) packages. This section would be similar to § 72.242.

10 CFR 71.175 Changes

This new section would provide requirements permitting a Part 71 certificate holder to make changes to the design of a Type B(DP) package without prior NRC approval. The certificate holder would be required to periodically submit to the NRC a summary of any changes made under § 71.175. This section would be similar to § 72.48.

10 CFR 71.177 Safety Analysis Report Updating

This new section would provide requirements for a Type B(DP) certificate holder on: (1) An initial submittal of an FSAR to the NRC; (2) submitting periodic updates of the FSAR to the NRC; and (3) providing a copy of the updated FSAR to each licensee using the Type B(DP) package. This section would be similar to § 72.248.

Appendix A to Part 71—Determination of A_1 and A_2

No changes were made in Paragraphs I, III, and V; however, these paragraphs would be included due to revising Appendix A in its entirety.

Paragraph II would be revised to use plain language and would be redesignated as subparagraph II(a). The intent of existing paragraph II would not be changed; however, the reference to existing Table A–2 would be revised as a conforming change to the new Table A–3. New paragraph II(b) would be added to provide direction on determining exempt material activity concentration and exempt consignment activity values when a radionuclide has been identified as a constituent of a proposed shipment, but the individual radionuclide is not listed in Table A–2. Consequently, the structure of paragraphs II(a) and II(b) would be the same. New paragraph II(c) would be added to provide direction to licensees on how to submit requests for Commission prior approval of either A_1 and A_2 values or exempt material activity concentration and exempt

consignment activity values, for radionuclides that are not listed in Tables A–1 and A–2, respectively.

Paragraph IV would be revised by adding new paragraphs (e) and (f) to provide equations to use in determining a consolidated exempt material activity concentration and exempt consignment activity values when a shipment contains multiple radionuclides. The existing text describing an alternative method for calculating the A_1 and A_2 value of a mixture would be redesignated as paragraphs (c) and (d). No changes would be made from the existing equations.

Appendix A, Table A–1—A_1 and A_2 Values for Radionuclides

This Table would be revised to reflect the values from TS–R–1.

Appendix A, Table A–2—Exempt Material Activity Concentrations and Exempt Consignment Activity Limits for Radionuclides

A new Table A–2 would be added to Appendix A of Part 71. This table would contain the values of Exempt Material Activity Concentrations and Exempt Consignment Activity Limits for selected radionuclides. Table A–2 is referenced in new § 71.14(a)(2), and is used by § 71.14 to determine when concentrations of material are not considered radioactive material, for the purposes of transportation.

Appendix A, Table A–3—General Values for A_1 and A_2

The existing Table A–2 would be redesignated as new Table A–3, and the values would be revised to reflect the changes from IAEA TS–R–1.

Appendix A, Table A–4—Activity Mass Relationships for Uranium

The existing Table A–3 would be redesignated as new Table A–4. No changes would be made to the values contained in new Table A–4.

VI. Criminal Penalties

For the purposes of Section 223 of the Atomic Energy Act (AEA), the Commission is proposing to issue amendments to amend 10 CFR Part 71 under one or more of sections 161b, 161i, or 161o of the AEA. Willful violations of the rule would be subject to criminal enforcement.

The following is a list of substantive rule sections being revised or added in this rulemaking: §§ 71.1, 71.3, 71.5, 71.8, 71.9, 71.12, 71.13, 71.14, 71.15, 71.17, 71.18, 71.19, 71.20, 71.21, 71.22, 71.23, 71.61, 71.63, 71.88, 71.91, 71.93, 71.95, 71.101, 71.103, 71.105, 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, 71.125, 71.127, 71.129, 71.131, 71.133, 71.135, 71.137, 71.171, 71.173, 71.175, and 71.177.

VII. Issues of Compatibility for Agreement States

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' which became effective on September 3, 1997 (62 FR 46517), NRC program elements (including regulations) are placed into four compatibility categories. In addition, NRC program elements also are identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A are those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner in order to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B are those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C are those program elements that do not meet the criteria of Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D are those program elements that do not meet any of the criteria of Category A, B, or C, above, and, thus, do not need to be adopted by Agreement States for purposes of compatibility. A bracket around a category means that the section may have been adopted elsewhere and it is not necessary to adopt it again. Health and Safety (H&S) are program elements that are not required for compatibility (i.e., Category D), but areidentified as having a particular health and safety role (i.e., adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this category based on those of NRC that embody the essential objectives of the NRC program elements because of particular health and safety considerations. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the Atomic Energy Act, as amended, or provisions of Title 10 of the Code of Federal Regulations. These program elements should not be adopted by Agreement States. The following table lists the Part 71 revisions and their corresponding categorization under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs.''

PART 71.—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

Regulation section	Section title	Compatibility category	Comments
§ 71.0	Purpose and Scope	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.1	Communications and Records.	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.2	Interpretations	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.3	Requirements for license.	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.4	Definitions		

PART 71.—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL—Continued

Regulation section	Section title	Compatibility category	Comments
	A_1	[B]	This definition is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. The bracket ''B'' indicates that if a State has adopted this definition in another portion of its regulations, such as the State's DOT regulations, then the adoption of this definition is not necessary.
	A_2	[B]	This definition is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. The bracket ''B'' indicates that if a State has adopted this definition in another portion of its regulations, such as the State's DOT regulations, then the adoption of this definition is not necessary.
	Certificate of Compliance (CoC).	D	This definition is not required for compatibility since it defines a term which pertains to an area reserved to NRC. A State may adopt this definition for purposes of clarity or communication. This definition can be adopted by Agreement States since it in and of itself does not convey any authority whereby a State can regulate in an exclusive NRC jurisdiction. However, if a State chooses to define the term then the definition should be essentially identical. In addition, this term does not meet any of the criteria of the Category A, B, C, or health and safety, and this term is widely accepted as an area of sole responsibility of the NRC.
	Criticality of Safety Index.	B	This definition is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. In addition, this definition is needed for a common understanding beyond a plain dictionary meaning of the term in order to implement §§ 71.22 and 71.23.
	Deuterium	B	This definition is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. In addition, this definition is needed for a common understanding beyond a plain dictionary meaning of the term in order to implement § 71.15.
	DOT	D	This term does not meet any of the criteria of the Category A, B, C, or health and safety because it is a widely accepted abbreviation for the U. S. Department of Transportation.
	Fissile material	[B]	This definition is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. The bracket ''B'' indicates that if a State has adopted this definition in another portion of its regulations, such as the State's DOT regulations, then the adoption of this definition is not necessary.
	Graphite	B	This definition is needed for a common understanding beyond a plain dictionary meaning of the term in order to implement § 71.15, which has direct and significant transboundary effects.
	High-level radioactive waste or HLW.	D	This definition is not required for compatibility since it defines a term which pertains to an area reserved to NRC. A State may adopt this definition for purposes of clarity or communication. This definition can be adopted by Agreement States since it in and of itself does not convey any authority whereby a State can regulate in an exclusive NRC jurisdiction. However, if a State chooses to define the term, then the definition should be essentially identical.
	Low Specific Activity (LSA) material.	[B]	This definition is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. The bracket ''B'' indicates that if a State has adopted this definition in another portion of its regulations, such as the State's DOT regulations, then the adoption of this definition is not necessary.
	Package	[B]	This definition is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. The bracket ''B'' indicates that if a State has adopted this definition in another portion of its regulations, such as the State's DOT regulations, then the adoption of this definition is not necessary.

PART 71.—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL—Continued

Regulation section	Section title	Compatibility category	Comments
	Spent nuclear fuel or Spent fuel.	D	This definition is not required for compatibility since it defines a term which pertains to an area reserved to NRC. A State may adopt this definition for purposes of clarity or communication. This definition can be adopted by Agreement States since it in and of itself does not convey any authority whereby a State can regulate in an exclusive NRC jurisdiction. However, if a State chooses to define the term, then the definition should be essentially identical.
	Structures, systems, and components important to safety (SSCs).	D	This definition is not required for compatibility since it defines a term which pertains to an area reserved to NRC. A State may adopt this definition for purposes of clarity or communication. This definition can be adopted by Agreement States since it in and of itself does not convey any authority whereby a State can regulate in an exclusive NRC jurisdiction. However, if a State chooses to define the term, then the definition should be essentially identical.
	Transport index	[B]	This definition is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. The bracket ''B'' indicates that if a State has adopted this definition in another portion of its regulations, such as the State's DOT regulations, then the adoption of this definition is not necessary.
§ 71.5	Transportation of licensed material.	B	This provision is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner.
§ 71.6	Information collection requirements: OMB approval.	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.7	Completeness and accuracy of information.	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.8	Deliberate misconduct	C	The Commission determined in response to SECY–97–156 that Agreement States should adopt the essential objectives of this provision. If deliberate misconduct and wrongdoing issues involving Agreement State licensees were not pursued and closed by Agreement States, then a potential gap may be created between NRC and Agreement State programs.
§ 71.9	Employee protection	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.10	Public inspection of application.	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.14	Exemptions for low level material.	B-paragraph (a) NRC-paragraphs (b) and (c).	Paragraph (a) is designated as a Compatibility Category B because of the significant transboundary impacts with respect to the implementation of the ''Exempt Activity Concentration Values,'' for individual radionuclides in Appendix A, which is designated as a Compatibility Category B. Paragraphs (b) and (c) are designated Compatibility Category ''NRC.'' This provision is reserved to the NRC because it delineates NRC's authority from that of DOT's in the area of transportation of radioactive materials. These provisions relinquish to DOT the control of types of shipment that are of low risk both from radiation and criticality standpoints. Further, to ensure that only low criticality risk shipments are included in the area of DOT authority, these provisions restrict the exemption to Type A and Low-Specific-Activity (LSA) or Surface Contaminated Objects (SCOs) that either contain no fissile material or satisfy the fissile material exemption requirements in § 71.15. Finally, this provision is reserved to the NRC because this exemption does not relieve licensees from DOT requirements by reason of NRC's authority. Thus, Agreement States should not adopt this provision in order to retain their ability to implement all of 49 CFR as directed by DOT.
§ 71.15	Exemptions from classification as fissile material.	[B]	This provision is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. The bracket ''B'' indicates that if a State has adopted this definition in another portion of its regulations, such as the State's DOT regulations, then the adoption of this definition is not necessary.

PART 71.—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL—Continued

Regulation section	Section title	Compatibility category	Comments
§ 71.17	General license: NRC-approved package.	B	This provision is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner.
§ 71.18	General license: NRC-approved Type B(DP) package.	NRC	This provision is reserved to NRC the NRC because it addresses packages intended for both the storage and transportation of spent fuel.
§ 71.19	Previously approved package.	NRC	This provision is reserved to the NRC because it addresses packages intended for both the storage and transportation of spent fuel.
§ 71.22	General license: Fissile material.	[B]	§ 71.22 was previously entitled, ''General license: Fissile material, limited quantity, controlled shipment.'' It was designated a Compatibility Category D. As a part of this amendment, this section was removed. This provision is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. The bracket ''B'' indicates that if a State has adopted this definition in another portion of its regulations, such as the State's DOT regulations, then the adoption of this definition is not necessary.
§ 71.23	General license: Plutonium-beryllium special form material.	[B]	This provision is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. The bracket ''B'' indicates that if a State has adopted this definition in another portion of its regulations, such as the State's DOT regulations, then the adoption of this definition is not necessary.
§ 71.24	[Reserved]		§ 71.24 was previously entitled, ''General license: Fissile material, limited moderator, controlled shipment.'' It was designated a Compatibility Category NRC. As a part of this amendment, this section was removed.
§ 71.25	[Reserved]		§ 71.25 is a new section that is reserved.
§ 71.41	Demonstration of compliance.	NRC	This provision is designated NRC because it addresses an area reserved to NRC's regulatory authority.
§ 71.51	Additional requirements for Type B packages.	NRC	This provision is designated NRC because it addresses an area reserved to NRC's regulatory authority, which is the approval of Type B packages.
§ 71.53	[Reserved]		§ 71.53 was previously entitled, ''Fissile material exemptions.'' It was designated a Compatibility Category NRC. As a part of this amendment, the provision was removed.
§ 71.55	General requirements for fissile material packages.	NRC	This provision is designated NRC because it addresses an area reserved to NRC's regulatory authority.
§ 71.59	Standards for arrays of fissile material packages.	NRC	This provision is designated NRC because it addresses an area reserved to NRC's regulatory authority.
§ 71.61	Special requirements for Type B packages containing morethan 10^5A_2.	NRC	This provision is designated NRC because it addresses an area reserved to NRC's regulatory authority.
§ 71.63	Special requirements for plutonium shipments.	NRC	This provision is designated NRC because it addresses an area reserved to NRC's regulatory authority.
§ 71.73	Hypothetical accident conditions.	NRC	This provision is designated NRC because it addresses an area reserved to NRC's regulatory authority.
§ 71.88	Air transport of plutonium.	B	This provision is designated Compatibility Category B because it applies to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner.
§ 71.91	Records	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.93	Inspection and tests	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.95	Reports	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.100	Criminal penalties	D	This provision does not meet penalties any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.

PART 71.—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL—Continued

Regulation section	Section title	Compatibility category	Comments
§ 71.101	Quality assurance requirements.	D—Paragraphs (a), (b), (c)(1) and (f) are designated D for those States which have no licensees that use Type B packages. C—Paragraphs (a), (b) and (c)(1) are designated C for those States which have licensees that use Type B packages. D—paragraph (f) C—paragraph (g) NRC—paragraph (c)(2), (d) and (e)	Paragraphs (a), (b), and (c)(1) are designated Category C and the essential objectives of these provisions should be adopted by those Agreement States which have licensees who use Type B packages. These provisions are designated Category C because the quality assurance of Type B packages is an activity that is needed in order to avoid a nationwide gap in the regulation of the transportation of radioactive materials. If these provisions are not adopted, this could result in undesirable consequences in multiple jurisdictions. The essential objective of paragraph (a) is that each licensee who uses a Type B package is responsible for the quality assurance requirements which apply to the use of a package. The essential objective of paragraph (b) is that each licensee who uses a Type B package shall establish, maintain, and execute a quality assurance program. The essential objective of paragraph (c)(1) is that each licensee who uses a Type B package shall, prior to the use of any package for the shipment of any material subject to this part, obtain approval of its quality assurance program by the regulatory agency. Paragraph (f) is not required for compatibility because the States have the flexibility to determine whether they wish to accept a previously approved quality assurance program.
§ 71.103	Quality assurance organization.	D—for those States which have no licensees that use Type B packages. [C]—Paragraph (a) is designated [C] for those States which have licensees that use Type B packages. C—Paragraph (b) is designated C for those States which have licensees that use Type B packages. D—paragraphs (d), (e), and (f)	For paragraph (a), those States which have licenses that use Type B packages, and have adopted the essential objectives of § 71.101(a), it is not necessary for them to adopt this provision again. Paragraph (b) is designated as a Category C and the essential objectives of these provisions should be adopted by those Agreement States which have licensees who use Type B packages. This provision is designated Category C because the quality assurance of Type B packages is an activity that is needed in order to avoid a nationwide gap in the regulation of the transportation of radioactive materials. If these provisions are not adopted, this could result in undesirable consequences in multiple jurisdictions. The essential objective of paragraph (b) is that each licensee who uses a Type B package should verify by procedures such as checking, auditing, and inspection, that activities affecting the safety-related functions have been performed correctly.
§ 71.105	Quality assurance program.	D—for those States which have no licensees that use Type B packages. C—Paragraphs (a) and (b) are designated as C for those States which have licensees that use Type B packages. D—paragraph (c)	Paragraphs (a) and (b) are designated Category C for those States which have licensees that use Type B packages. These provisions are designated Category C because the quality assurance of Type B packages is an activity that is needed in order to avoid a nationwide gap in the regulation of the transportation of radioactive materials. If these provisions are not adopted, this could result in undesirable consequences in multiple jurisdictions. The essential objectives of paragraph (a) are that each licensee who uses a Type B package shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used, and shall identify the material and components covered by the quality assurance program. The essential objective of paragraph (b) is that each licensee who uses a Type B package shall, through its quality assurance program, provide control over activities affecting the quality of the identified materials and components to an extent to assure that Type B packages are shipped and maintained in accordance with the certificate of compliance or other approval.
§ 71.107	Package design control.	NRC	This provision is reserved to the NRC because it addresses the design, fabrication, modification, and approval of Type B packages.
§ 71.109	Procurement document control.	NRC	This provision is reserved to the NRC because it addresses the design, fabrication, modification, and approval of Type B packages.
§ 71.111	Instructions, procedures, and drawings.	NRC	This provision is reserved to the NRC because it addresses the design, fabrication, modification, and approval of Type B packages.
§ 71.113	Document control	NRC	This provision is reserved to the NRC because it addresses the design, fabrication, modification, and approval of Type B packages.
§ 71.115	Control of purchased material, equipment, and services.	NRC	This provision is reserved to the NRC because it addresses the design, fabrication, modification, and approval of Type B packages.

PART 71.—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL—Continued

Regulation section	Section title	Compatibility category	Comments
§ 71.117	Identification and control of materials, parts, and components.	NRC	This provision is reserved to the NRC because it addresses the design, fabrication, modification, and approval of Type B packages.
§ 71.119	Control of special processes.	NRC	This provision is reserved to the NRC because it addresses the design, fabrication, modification, and approval of Type B packages.
§ 71.121	Internal Inspection	NRC	This provision is reserved to the NRC because it addresses the design, fabrication, modification, and approval of Type B packages.
§ 71.123	Test control	NRC	This provision is reserved to the NRC because it addresses the design, fabrication, modification, and approval of Type B packages.
§ 71.125	Control of measuring and test equipment.	NRC	This provision is reserved to the NRC because it addresses the design, fabrication, modification, and approval of Type B packages.
§ 71.127	Handling, storage, and shipping control.	D—for those States which have no licensees that use Type B packages. [C]—for those States which have licensees that use Type B packages	For those States which have licensees that use Type B packages, and have adopted the essential objectives of § 71.105(b), it is not necessary for them to adopt this provision again.
§ 71.129	Inspection, test, and operating status.	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.131	Nonconforming materials, parts, or components.	D	This provision does not meet any of the criteria for designations Category A, B, C, or health and safety. Thus, it does not need to be adopted by Agreement States.
§ 71.133	Corrective action	D—for those States which have no licensees that use Type B packages. C—for those States which have licensees that use Type B packages	This provision is designated Category C for those States which have licensees that use Type B packages. This provision is designated Category C because the quality assurance of Type B packages is an activity that is needed in order to avoid a nationwide gap in the regulation of the transportation of radioactive materials. If this provision is not adopted, this could result in undesirable consequences in multiple jurisdictions. The essential objective of this provision is that each licensee who uses a Type B package shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected.
§ 71.135	Quality assurance records.	D—for those States which have no licensees that use Type B packages. C—for those States which have licensees that use Type B packages	This provision is designated a Category C for those States which have licensees that use Type B packages. This provision is designated Category C because the quality assurance of Type B packages is an activity that is needed in order to avoid a nationwide gap in the regulation of the transportation of radioactive materials. If this provision is not adopted, this could result in undesirable consequences in multiple jurisdictions. The essential objective of this provision is that each licensee who uses a Type B package shall maintain sufficient written records to demonstrate compliance with the quality assurance program.
§ 71.137	Audits	D—for those States which have no licensees that use Type B packages. C—for those States which have licensees that use Type B packages	This provision is designated a Category C for those States which have licensees that use Type B packages. This provision is designated Category C because the quality assurance of Type B packages is an activity that is needed in order to avoid a nationwide gap in the regulation of the transportation of radioactive materials. If this provision is not adopted, this could result in undesirable consequences in multiple jurisdictions. The essential objectives of this provision are that each licensee who uses a Type B package shall carry out a system of planned and periodic audits to: (1) verify compliance with all aspects of the quality assurance program, (2) determine the effectiveness of the program, and (3) verify that the audits are performed by appropriately trained personnel.
§§ 71.151 through 71.177.	Subpart I—Type B(DP) Package Approval.	NRC	Subpart I is designated Category NRC because it addresses Type B (DP) package approval, an area reserved to NRC's regulatory authority.
Appendix A	Determination of A_1 and A_2.	B	This provision is designated a Category B because it applies to activities that have direct and significant effects in multiple jurisdictions.

VIII. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing,'' directed that the Federal government's writing be in plain language. This memorandum was published June 10, 1998 (63 FR 31883). In complying with this directive, editorial changes have been made in the proposed revision to improve the organization and readability of the existing language of paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be

sent to the address listed under the **ADDRESSES** heading.

IX. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standard bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC considered but decided not to adopt the ASME Code, Section III, Division 3, as described in Issue 14. However, the NRC is presenting amendments to its transportation regulations that would make them compatible with the IAEA transportation standards. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

X. Environmental Assessment: Finding of No Significant Environmental Impact

The Commission has prepared a draft environmental assessment entitled: Draft Environmental Assessment (EA) of Major Revision of 10 CFR Part 71 (NUREG/CR–6711, March 2002), on this proposed regulation. The draft EA is available on the NRC rulemaking website and is also available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD. The Commission requests public comments on the draft EA. Comments on the draft EA may be submitted to the NRC as indicated under the **ADDRESSES** heading. The following is a brief summary of the draft EA.

The EA grouped the proposed action into 19 different changes to Part 71, which could be adopted either all together as one list or independently in a partial list. Of these 19 changes, the following four meet the NRC's categorical exclusion criteria:

- Changes to Various Definitions (Issue 9);
- Expansion of Part 71 Quality Assurance Requirements to Certificate of Compliance (CoC) Holders (Issue 13);
- Change Authority for Dual-Purpose Package Certificate Holders (Issue 15); and
- Modifications of Event Reporting Requirements (Issue 19).

None of the remaining 15 changes are expected to cause a significant impact to human health, safety, or the environment, whether promulgated altogether or individually. In fact, most of the changes would have negligible effects or result in slight improvements in health, safety, and environmental protection. In particular, the following changes are primarily administrative in nature, would not cause any new negative impacts, and would result in the beneficial effect of simplifying and/or harmonizing the NRC's regulations with TS–R–1:

- Changing Part 71 to the International System of Units (SI) Only (Issue 1);
- Revision of A1 and A2 (Issue 3);
- A new requirement to display the Criticality Safety Index on shipping packages of fissile material (Issue 5);
- A provision to ''grandfather'' older shipping packages under the Part 71 requirements in existence when their Certificates of Compliance were issued (Issue 8); and
- Procedures for approval of special arrangements for shipment of special packages (Issue 12).

The following changes would result in slight net improvements in health, safety, and environmental protection:

- Addition of uranium hexafluoride package requirements (Issue 4);
- Strengthening the requirements in § 71.61 to ensure package containment in deep submersion scenarios (Issue 7);
- Adoption of the crush test for fissile material package design (Issue 10);
- Adoption of fissile material package design requirements for transport by aircraft (Issue 11); and
- Adoption of the ASME Code for spent fuel transportation casks (Issue 14).

The proposal to change the existing 70 Bq/g (0.002 μCi/g) level to radionuclide-specific activity limits (Issue 2) is expected to have mixed, although overall minor, effects. For radionuclides with new exemption values that are lower than the current limit, there could be a decrease in the number of exempted shipments and a commensurate slight increase in the level of protection. For radionuclides with new exemption values that are higher than the current limit, there could be an increase in the number of exempted shipments and a commensurate slight increase in associated radiation exposures. However, IAEA and the NRC have determined that this change would not significantly increase the risk to individuals.

The addition of the Type C package and low level dispersible material concepts (Issue 6) would result in mixed, although overall minor, effects. If the same number of packages are handled, the radiation doses to workers loading and unloading Type C packages shipped by air will be slightly higher than the doses to workers loading and unloading other kinds of packages shipped by other means. At the same time, ''incident-free'' doses during the shipping of Type C packages are expected to be slightly reduced compared to baseline conditions, while the risks associated with accidents during shipping could be slightly increased or decreased depending on the shipping scenario.

Changes to transportation regulations for fissile materials actually consist of 17 individual recommendations for revisions to part 71 (Issue 16). Ten of these recommendations are expected to result in no impact, as they simply clarify definitions, consolidate related requirements into single sections, or streamline the regulations. Four of the recommendations will result in small improvements to health, safety, and environmental protection by eliminating confusion among licensees and/or providing added assurance for critical safety. The last two recommendations, which would revise exemptions for low-level material and remove or modify provisions related to the shipment of Pu-Be neutron sources, are expected to significantly improve criticality safety.

Changes to the requirements for plutonium shipments in § 71.63 (PRM–71–12) could result in a slight increase in the probability and consequences of accidental releases, primarily when and if plutonium is shipped in liquid form. However, most plutonium shipments are either related to the disposition of plutonium wastes or to the production of mixed oxides, neither of which involve the shipment of a liquid solution of plutonium.

No changes have been identified for the issue related to surface contamination limits as applied to spent fuel and high level waste (Issue 18). The issue was included in the proposed rule in response to Commission direction in SRM–SECY–00–0117. NRC is seeking input on whether the NRC should address this issue in future rulemaking activities. As a result, no regulatory options were developed, and therefore no environmental assessment conducted.

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment, and therefore an environmental impact statement (EIS) is not required.

The Commission's ''Final Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes,'' NUREG–

0170 [19], dated December 1977, is NRC's generic EIS, covering all types of radioactive material transportation by all modes (road, rail, air, and water). From the Commission's latest survey of radioactive material shipments and their characteristics, ''Transport of Radioactive Material in the United States,'' SAND 84–7174, April 1985, the NRC concluded that current radioactive material shipments are not so different from those evaluated in NUREG–0170 as to invalidate the results or conclusions of that EIS. Environmental assessment of the impacts associated with this rulemaking is evaluated in ''Environmental Assessment of Major Revision to Packaging and Transportation of Radioactive Material Regulations (10 CFR part 71),'' dated February 2000.

NUREG–0170 established the nonaccident related radiation exposures associated with transportation of radioactive material in the United States as 98 person-Sv (9800 person-rem) which, based on the conservative linear radiation dose hypothesis, resulted in a maximum of 1.7 genetic effects and 1.2 latent cancer effects per year. More than half this impact resulted from shipment of medical-use radioactive materials. Accident related impacts were established at a maximum of one genetic effect and one latent cancer fatality for 200 years of transporting radioactive materials. The principal nonradiological impacts were found to be two injuries per year, and less than one accidental death per 4 years. In contrast, nonaccident related radiation exposures and accident related impacts associated with this rulemaking would not change from the impact of the current Part 71 requirements (i.e., no increase or decrease). Nonradiological traffic injuries and nonradiological traffic deaths would not change. These impacts are judged to be insignificant compared with the baseline impacts established in NUREG–0170.

The environmental assessment and finding of no significant impact on which this determination is based are available, for inspection, at the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD. The environmental assessment is also available on the NRC rulemaking website.

[19] Copies of NUREG–0170 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and copying for a fee in the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville MD.

XI. Paperwork Reduction Act Statement

The proposed rule would amend information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

The burden to the public for these information collections is estimated to average 16.3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden, to the Records Management Branch (T–6E6), U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0008), Office of Management and Budget, Washington, DC 20503.

Comments to OMB on the information collections or on the above issues should be submitted by May 30, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and person is not required to respond to, the information collection.

XII. Regulatory Analysis

The Commission has prepared a draft regulatory analysis entitled ''Draft Regulatory Analysis of Major Revision of 10 CFR part 71—Proposed Rule, NUREG/CR–6713, March 2002.'' To support the discussions of the proposed changes, selected material from this regulatory analysis has been included earlier under each issue. The analysis examines the costs and benefits of the alternatives considered by the Commission. The draft regulatory analysis is available on the NRC rulemaking website, also available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Room O–1F21, Rockville, MD. The Commission requests public comments on the draft regulatory analysis. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

XIII. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects NRC licensees, including operators of nuclear power plants, who transport or deliver to a carrier for transport, relatively large quantities of radioactive material in a single package. These companies do not generally fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards adopted by the NRC (10 CFR 2.810).

XIV. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule; therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would require backfits as defined in 10 CFR Chapter I.

List of Subjects in 10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the Commission is proposing to revise 10 CFR Part 71 as follows:

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

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

Authority: Secs. 53, 57, 62, 63, 81, 161, 182, 183, 68 Stat. 930, 932, 933, 935, 948, 953, 954, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2297f); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846);

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

2. Subparts A, B, and C to Part 71 are revised to read as follows:

Subpart A—General Provisions

Sec.
71.0 Purpose and scope.
71.1 Communications and records.
71.2 Interpretations.
71.3 Requirement for license.
71.4 Definitions.
71.5 Transportation of licensed material.
71.6 Information collection requirements: OMB approval.
71.7 Completeness and accuracy of information.
71.8 Deliberate misconduct.
71.9 Employee protection.
71.10 Public inspection of application.
71.11 [Reserved]

Subpart B—Exemptions

71.12 Specific exemptions.
71.13 Exemption of physicians.
71.14 Exemption for low-level materials.
71.15 Exemption from classification as fissile material.
71.16 [Reserved.]

Subpart C—General Licenses

71.17 General license: NRC-approved package.
71.18 General license: NRC-approved Type B(DP) package.
71.19 Previously approved package.
71.20 General license: DOT specification container.
71.21 General License: Use of foreign approved package.
71.22 General license: Fissile material.
71.23 General license: Plutonium-beryllium special form material.
71.24 [Reserved]
71.25 [Reserved]

Subpart A—General Provisions

§ 71.0 Purpose and scope.

(a) This part establishes —

(1) Requirements for packaging, preparation for shipment, and transportation of licensed material; and

(2) Procedures and standards for NRC approval of packaging and shipping procedures for fissile material and for a quantity of other licensed material in excess of a Type A quantity.

(b) The packaging and transport of licensed material are also subject to other parts of this chapter (e.g., 10 CFR parts 20, 21, 30, 40, 70, and 73) and to the regulations of other agencies (e.g., the U.S. Department of Transportation (DOT) and the U.S. Postal Service) [1] having jurisdiction over means of transport. The requirements of this part are in addition to, and not in substitution for, other requirements.

(c) The regulations in this part apply to any licensee authorized by specific or general license issued by the Commission to receive, possess, use, or transfer licensed material, if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage as specified in the NRC license, or transports that material on public highways. No provision of this part authorizes possession of licensed material.

(d)(1) Exemptions from the requirement for license in § 71.3 are specified in § 71.14. General licenses for which no NRC package approval is required are issued in §§ 71.20 through 71.23. The general license in § 71.17 requires that an NRC certificate of compliance or other package approval be issued for the package to be used under this general license. The general license in § 71.18 requires that an NRC certificate of compliance or other package approval be issued for the Type B(DP) package to be used under this general license.

(2) Application for package approval, other than Type B(DP) packages, must be completed in accordance with subpart D of this part, demonstrating that the design of the package to be used satisfies the package approval standards contained in subpart E of this part, as related to the tests of subpart F of this part.

(3) Application for Type B(DP) package approval must be completed in accordance with subpart I of this part, demonstrating that the design of the package to be used satisfies the applicable package approval standards contained in subpart E of this part, as related to the tests of subpart F of this part.

(4) A licensee transporting licensed material, or delivering licensed material to a carrier for transport, shall comply with the operating control requirements of subpart G of this part; the quality assurance requirements of subpart H of this part; and the general provisions of subpart A of this part, including DOT regulations referenced in § 71.5.

(e) The regulations of this part apply to any person holding or applying for a certificate of compliance, issued pursuant to this part, for a package intended for the transportation of radioactive material, outside the confines of a licensee's facility or authorized place of use.

(f) The regulations in this part apply to any person required to obtain a certificate of compliance, or an approved compliance plan, pursuant to part 76 of this chapter, if the person delivers radioactive material to a common or contract carrier for transport or transports the material outside the confines of the person's plant or other authorized place of use.

(g) This part also gives notice to all persons who knowingly provide to any licensee, certificate holder, quality assurance program approval holder, applicant for a license, certificate, or quality assurance program approval, or to a contractor, or subcontractor of any of them, components, equipment, materials, or other goods or services, that relate to a licensee's, certificate holder's, quality assurance program approval holder's, or applicant's activities subject to this part, that they may be individually subject to NRC enforcement action for violation of § 71.8.

§ 71.1 Communications and records.

(a) Except where otherwise specified, all communications and reports concerning the regulations in this part and applications filed under them should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001. Written communications, reports, and applications may be delivered in person to the U.S. NRC, ATTN: Document Control Desk, at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738 between 7:30 a.m. and 4:15 p.m., Federal workdays. If the submittal deadline date falls on a Saturday, Sunday, or a Federal holiday, the next Federal workday becomes the official due date.

(b) Each record required by this part must be legible throughout the retention period specified by each Commission regulation. The record may be the original or a reproduced copy or a microform provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and

[1] Department of Transportation regulations in 49 CFR chapter I; Postal Service manual (Domestic Manual), Section 124, which is incorporated by reference at 39 CFR 111.1.

specifications must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

§ 71.2 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this part by any officer or employee of the Commission, other than a written interpretation by the General Counsel, will be recognized to be binding upon the Commission.

§ 71.3 Requirement for license.

Except as authorized in a general license or a specific license issued by the Commission, or as exempted in this part, no licensee may—

(a) Deliver licensed material to a carrier for transport; or

(b) Transport licensed material.

§ 71.4 Definitions.

The following terms are as defined here for the purpose of this part. To ensure compatibility with international transportation standards, all limits in this part are given in terms of dual units: The International System of Units (SI) followed or preceded by U.S. standard or customary units. The U.S. customary units are not exact equivalents but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this part, either unit may be used.

A_1 means the maximum activity of special form radioactive material permitted in a Type A package. This value is either listed in Appendix A, Table A–1, of this part, or may be derived in accordance with the procedures prescribed in Appendix A of this part.

A_2 means the maximum activity of radioactive material, other than special form material, LSA, and SCO material, permitted in a Type A package. This value is either listed in Appendix A, Table A–1, of this part, or may be derived in accordance with the procedures prescribed in Appendix A of this part.

Carrier means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

Certificate holder means a person who has been issued a certificate of compliance or other package approval by the Commission.

Certificate of Compliance (CoC) means the certificate issued by the Commission under either subpart D or I of this part which approves the design of a package for the transportation of radioactive material.

Close reflection by water means immediate contact by water of sufficient thickness for maximum reflection of neutrons.

Containment system means the assembly of components of the packaging intended to retain the radioactive material during transport.

Conveyance means:

(1) For transport by public highway or rail any transport vehicle or large freight container;

(2) For transport by water any vessel, or any hold, compartment, or defined deck area of a vessel including any transport vehicle on board the vessel; and

(3) For transport by aircraft any aircraft.

Criticality Safety Index (CSI) means the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages containing fissile material during transportation. Determination of the criticality safety index is described in §§ 71.22, 71.23, and 71.59.

Deuterium means, for the purposes of §§ 71.15 and 71.22, the definition of *Deuterium* as found in § 110.2 of this chapter.

DOT means the U.S. Department of Transportation.

Exclusive use means the sole use by a single consignor of a conveyance for which all initial, intermediate, and final loading and unloading are carried out in accordance with the direction of the consignor or consignee. The consignor and the carrier must ensure that any loading or unloading is performed by personnel having radiological training and resources appropriate for safe handling of the consignment. The consignor must issue specific instructions, in writing, for maintenance of exclusive use shipment controls, and include them with the shipping paper information provided to the carrier by the consignor.

Fissile material means the radionuclides uranium-233, uranium-235, plutonium-239, and plutonium-241, or any combination of these radionuclides. Fissile material means the fissile nuclides themselves, not material containing fissile nuclides. Unirradiated natural uranium and depleted uranium and natural uranium or depleted uranium, that has been irradiated in thermal reactors only, are not included in this definition. Certain exclusions from fissile material controls are provided in § 71.15.

Graphite means, for the purposes of §§ 71.15 and 71.22, the definition of *Nuclear grade graphite* as found in § 110.2 of this chapter.

Licensed material means by-product, source, or special nuclear material received, possessed, used, or transferred under a general or specific license issued by the Commission pursuant to the regulations in this chapter.

Low Specific Activity (LSA) material means radioactive material with limited specific activity that satisfies the descriptions and limits set forth in this definition. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. LSA material must be in one of three groups:

(1) LSA—I.

(i) Ores containing only naturally occurring radionuclides (e.g., uranium, thorium) and uranium or thorium concentrates of such ores;

(ii) Solid unirradiated natural uranium or depleted uranium or natural thorium or their solid or liquid compounds or mixtures;

(iii) Radioactive material, other than fissile material, for which the A_2 value is unlimited; or

(iv) Mill tailings, contaminated earth, concrete, rubble, other debris, and activated material in which the radioactive material is essentially uniformly distributed, and the average specific activity does not exceed 10^{-6} A_2/g.

(2) LSA—II.

(i) Water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

(ii) Material in which the radioactive material is distributed throughout, and the average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and $10-5$ A_2/g for liquids.

(3) LSA—III. Solids (e.g., consolidated wastes, activated materials) that satisfy the requirements of § 71.77, in which:

(i) The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

(ii) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that, even under loss of packaging, the loss of radioactive material per package by leaching, when placed in water for 7 days, would not exceed 0.1 A_2; and

(iii) The average specific activity of the solid does not exceed 2×10^{-3} A_2/g.

Low toxicity alpha emitters means natural uranium, depleted uranium,

natural thorium; uranium-235, uranium-238, thorium-232, thorium-228 or thorium-230 when contained in ores or physical or chemical concentrates or tailings; or alpha emitters with a half-life of less than 10 days.

Maximum normal operating pressure means the maximum gauge pressure that would develop in the containment system in a period of 1 year under the heat condition specified in § 71.71(c)(1), in the absence of venting, external cooling by an ancillary system, or operational controls during transport.

Natural thorium means thorium with the naturally occurring distribution of thorium isotopes (essentially 100 weight percent thorium-232).

Normal form radioactive material means radioactive material that has not been demonstrated to qualify as ''special form radioactive material.''

Optimum interspersed hydrogenous moderation means the presence of hydrogenous material between packages to such an extent that the maximum nuclear reactivity results.

Package means the packaging together with its radioactive contents as presented for transport.

(1) Fissile material package or Type AF package, Type BF package, Type B(U)F package, or Type B(M)F package means a fissile material packaging together with its fissile material contents.

(2) Type A package means a Type A packaging together with its radioactive contents. A Type A package is defined and must comply with the DOT regulations in 49 CFR part 173.

(3) Type B package means a Type B packaging together with its radioactive contents. On approval, a Type B package design is designated by NRC as B(U) unless the package has a maximum normal operating pressure of more than 700 kPa (100 lbs/in^2) gauge or a pressure relief device that would allow the release of radioactive material to the environment under the tests specified in § 71.73 (hypothetical accident conditions), in which case it will receive a designation B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval of international shipments. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, see DOT regulations in 49 CFR part 173. A Type B package approved before September 6, 1983, was designated only as Type B. Limitations on its use are specified in § 71.19.

(4) Type B(DP) package means a Type B(DP) packaging together with its radioactive contents. A Type B(DP) package is a dual-purpose package intended for both the transportation and storage of spent fuel. A Type B(DP) package is also a fissile material package. A Type B(DP) package is issued both a certificate of compliance approving the design of a spent-fuel transportation package, in accordance with subpart I of this part, and a certificate of compliance approving the design of a spent fuel storage cask, in accordance with subpart L of part 72 of this chapter.

Packaging means the assembly of components necessary to ensure compliance with the packaging requirements of this part. It may consist of one or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

Special form radioactive material means radioactive material that satisfies the following conditions:

(1) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(2) The piece or capsule has at least one dimension not less than 5 mm (0.2 in); and

(3) It satisfies the requirements of § 71.75. A special form encapsulation designed in accordance with the requirements of § 71.4 in effect on June 30, 1983 (see 10 CFR part 71, revised as of January 1, 1983), and constructed before July 1, 1985, and a special form encapsulation designed in accordance with the requirements of § 71.4 in effect on March 31, 1996 (see 10 CFR part 71, revised as of January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

Specific activity of a radionuclide means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

Spent nuclear fuel or *Spent fuel* means fuel that has been withdrawn from a nuclear reactor following irradiation, has undergone at least one year's decay since being used as a source of energy in a power reactor, and has not been chemically separated into its constituent elements by reprocessing. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive materials associated with fuel assemblies.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Structures, systems, and components important to safety (SSCs) means those features of a Type B(DP) package whose functions are—

(1) To maintain the conditions required to safely transport the package's contents;

(2) To prevent damage to the package during transport; or

(3) To provide reasonable assurance that the radioactive material contents can be received, handled, transported, and retrieved without undue risk to public health and safety and the environment.

Surface Contaminated Object (SCO) means a solid object that is not itself classed as radioactive material, but which has radioactive material distributed on any of its surfaces. SCO must be in one of two groups with surface activity not exceeding the following limits:

(1) SCO—I: A solid object on which:

(i) The nonfixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4 Bq/cm^2 (10^{-4} microcurie/cm^2) for beta and gamma and low toxicity alpha emitters, or 0.4 Bq/cm^2 (10^{-5} microcurie/cm^2) for all other alpha emitters;

(ii) The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4×10^4 Bq/cm^2 (1.0 microcurie/cm^2) for beta and gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm^2 (0.1 microcurie/cm^2) for all other alpha emitters; and

(iii) The nonfixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 4×10^4 Bq/cm^2 (1 microcurie/cm^2) for beta and gamma and low toxicity alpha emitters, or 4×10^3 Bq/cm^2 (0.1 microcurie/cm^2) for all other alpha emitters.

(2) SCO—II: A solid object on which the limits for SCO—I are exceeded and on which:

(i) The nonfixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 400 Bq/cm^2 (10^{-2} microcurie/cm^2) for beta and gamma and low toxicity alpha emitters or 40 Bq/cm^2 (10^{-3} microcurie/cm^2) for all other alpha emitters;

(ii) The fixed contamination on the accessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8×10^5 Bq/cm^2 (20 microcuries/cm^2) for beta and gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm^2 (2 microcuries/cm^2) for all other alpha emitters; and

(iii) The nonfixed contamination plus the fixed contamination on the inaccessible surface averaged over 300 cm^2 (or the area of the surface if less than 300 cm^2) does not exceed 8×10^5 Bq/cm^2 (20 microcuries/cm^2) for beta and gamma and low toxicity alpha emitters, or 8×10^4 Bq/cm^2 (2 microcuries/cm^2) for all other alpha emitters.

Transport index (TI) means the dimensionless number (rounded up to the next tenth) placed on the label of a package, to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number determined by multiplying the maximum radiation level in millisievert (mSv) per hour at 1 meter (3.3 ft) from the external surface of the package by 100 (equivalent to the maximum radiation level in millirem per hour at 1 meter (3.3 ft)).

Type A quantity means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material, or A_2, for normal form radioactive material, where A_1 and A^2 are given in Table A—1 of this part, or may be determined by procedures described in Appendix A of this part.

Type B quantity means a quantity of radioactive material greater than a Type A quantity.

Uranium—natural, depleted, enriched:

(1) *Natural uranium* means uranium with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

(2) *Depleted uranium* means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(3) *Enriched uranium* means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

§ 71.5 Transportation of licensed material.

(a) Each licensee who transports licensed material outside the site of usage, as specified in the NRC license, or where transport is on public highways, or who delivers licensed material to a carrier for transport, shall comply with the applicable requirements of the DOT regulations in 49 CFR parts 170 through 189 appropriate to the mode of transport.

(1) The licensee shall particularly note DOT regulations in the following areas:

(i) Packaging—49 CFR part 173: subparts A and B and I.

(ii) Marking and labeling—49 CFR part 172: subpart D, §§ 172.400 through 172.407, §§ 172.436 through 172.440, and subpart E.

(iii) Placarding—49 CFR part 172: subpart F, especially §§ 172.500 through 172.519, 172.556, and appendices B and C.

(iv) Accident reporting—49 CFR part 171: §§ 171.15 and 171.16.

(v) Shipping papers and emergency information—49 CFR part 172: subparts C and G.

(vi) Hazardous material employee training—49 CFR part 172: subpart H.

(vii) Hazardous material shipper/carrier registration—49 CFR part 107: subpart G.

(2) The licensee shall also note DOT regulations pertaining to the following modes of transportation:

(i) Rail—49 CFR part 174: subparts A through D and K.

(ii) Air—49 CFR part 175.

(iii) Vessel—49 CFR part 176: subparts A through F and M.

(iv) Public Highway—49 CFR part 177 and parts 390 through 397.

(b) If DOT regulations are not applicable to a shipment of licensed material, the licensee shall conform to the standards and requirements of the DOT specified in paragraph (a) of this section to the same extent as if the shipment or transportation were subject to DOT regulations. A request for modification, waiver, or exemption from those requirements, and any notification referred to in those requirements, must be filed with, or made to, the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

§ 71.6 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0008.

(b) The approved information collection requirements contained in this part appear in §§ 71.5, 71.7, 71.9, 71.12, 71.17, 71.18, 71.19, 71.20, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.47, 71.85, 71.87, 71.89, 71.91, 71.93, 71.95, 71.97, 71.101, 71.103, 71.105, 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, 71.125, 71.127, 71.129, 71.131, 71.133, 71.135, 71.137, 71.151, 71.153, 71.155, 71.157, 71.159, 71.161, 71.165, 71.167, 71.171, 71.173, 71.175, 71.177, and Appendix A.

§ 71.7 Completeness and accuracy of information.

(a) Information provided to the Commission by a licensee, certificate holder, or an applicant for a license or CoC; or information required by statute or by the Commission's regulations, orders, license or CoC conditions, to be maintained by the licensee or certificate holder, must be complete and accurate in all material respects.

(b) Each licensee, certificate holder, or applicant for a license or CoC must notify the Commission of information identified by the licensee, certificate holder, or applicant for a license or CoC as having, for the regulated activity, a significant implication for public health and safety or common defense and security. A licensee, certificate holder, or an applicant for a license or CoC violates this paragraph only if the licensee, certificate holder, or applicant for a license or CoC fails to notify the Commission of information that the licensee, certificate holder, or applicant for a license or CoC has identified as having a significant implication for public health and safety or common defense and security. Notification must be provided to the Administrator of the appropriate Regional Office within two working days of identifying the information. This requirement is not applicable to information which is already required to be provided to the Commission by other reporting or updating requirements.

§ 71.8 Deliberate misconduct.

(a) This section applies to any—

(1) Licensee;

(2) Certificate holder;

(3) Quality assurance program approval holder;

(4) Applicant for a license, certificate, or quality assurance program approval;

(5) Contractor (including a supplier or consultant) or subcontractor, to any person identified in paragraphs (a)(4) of this section; or

(6) Employees of any person identified in paragraphs (a)(1) through (a)(5) of this section.

(b) A person identified in paragraph (a) of this section who knowingly provides to any entity, listed in paragraphs (a)(1) through (a)(5) of this section, any components, materials, or other goods or services that relate to a licensee's, certificate holder's, quality assurance program approval holder's or applicant's activities subject to this part may not:

(1) Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, certificate holder, quality assurance program approval holder, or any applicant to be in violation of any rule, regulation, or order; or any term, condition or limitation of any license, certificate or approval issued by the Commission; or

(2) Deliberately submit to the NRC, a licensee, a certificate holder, quality assurance program approval holder, an applicant for a license, certificate or quality assurance program approval, or a licensee's, applicant's, certificate holder's, or quality assurance program approval holder's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC.

(c) A person who violates paragraph (b)(1) or (b)(2) of this section may be subject to enforcement action in accordance with the procedures in 10 CFR part 2, subpart B.

(d) For the purposes of paragraph (b)(1) of this section, deliberate misconduct by a person means an intentional act or omission that the person knows:

(1) Would cause a licensee, certificate holder, quality assurance program approval holder, or applicant for a license, certificate, or quality assurance program approval to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license or certificate issued by the Commission; or

(2) Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, certificate holder, quality assurance program approval holder, applicant, or the contractor or subcontractor of any of them.

§ 71.9 Employee protection.

(a) Discrimination by a Commission licensee, certificate holder, an applicant for a Commission license or a CoC, or a contractor or subcontractor of any of these, against an employee for engaging in certain protected activities, is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, or privileges of employment. The protected activities are established in section 211 of the Energy Reorganization Act of 1974, as amended, and in general are related to the administration or enforcement of a requirement imposed under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended.

(1) The protected activities include, but are not limited to:

(i) Providing the Commission or his or her employer information about alleged violations of either of the statutes named in paragraph (a) of this section or possible violations of requirements imposed under either of those statutes;

(ii) Refusing to engage in any practice made unlawful under either of the statutes named in paragraph (a) of this section or under the requirements in 10 CFR chapter I if the employee has identified the alleged illegality to the employer;

(iii) Requesting the Commission to institute action against his or her employer for the administration or enforcement of the requirements in 10 CFR chapter I.

(iv) Testifying in any Commission proceeding, or before Congress, or at any Federal or State proceeding regarding any provision (or proposed provision) of either of the statutes named in paragraph (a) of this section; and

(v) Assisting or participating in, or is about to assist or participate in, these activities.

(2) These activities are protected even if no formal proceeding is actually initiated as a result of the employee's assistance or participation.

(3) This section has no application to any employee alleging discrimination prohibited by this section who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of the Energy Reorganization Act of 1974, as amended, or the Atomic Energy Act of 1954, as amended.

(b) Any employee who believes that he or she has been discharged or otherwise discriminated against by any person for engaging in protected activities specified in paragraph (a)(1) of this section may seek a remedy for the discharge or discrimination through an administrative proceeding in the Department of Labor. The administrative proceeding must be initiated within 180 days after an alleged violation occurs. The employee may do this by filing a complaint alleging the violation with the Department of Labor, Employment Standards Administration, Wage and Hour Division. The Department of Labor may order reinstatement, back pay, and compensatory damages.

(c) A violation of paragraph (a), (e), or (f) of this section by a Commission licensee, certificate holder, applicant for a Commission license or a CoC, or a contractor or subcontractor of any of these may be grounds for:

(1) Denial, revocation, or suspension of the license or the CoC;

(2) Imposition of a civil penalty on the licensee or applicant; or

(3) Other enforcement action.

(d) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibition applies when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in protected activities does not automatically render him or her immune from discharge or discipline for legitimate reasons or from adverse action dictated by nonprohibited considerations.

(e)(1) Each licensee, certificate holder, and applicant for a license or CoC must prominently post the current revision of NRC Form 3, ''Notice to Employees,'' referenced in § 19.11(c) of this chapter. This form must be posted at locations sufficient to permit employees protected by this section to observe a copy on the way to or from their place of work. The premises must be posted not later than 30 days after an application is docketed and remain posted while the application is pending before the Commission, during the term of the license or CoC, and for 30 days following license or CoC termination.

(2) Copies of NRC Form 3 may be obtained by writing to the Regional Administrator of the appropriate U.S. Nuclear Regulatory Commission Regional Office listed in Appendix D to part 20 of this chapter or by calling the NRC Publishing Services Branch at 301–415–5877.

(f) No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to section 211 of the Energy Reorganization Act of 1974, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in a protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC's regulatory responsibilities.

§ 71.10 Public inspection of application.

Applications for approval of a package design under this part, which are submitted to the Commission, may be made available for public inspection, in accordance with provisions of parts 2 and 9 of this chapter. This includes an application to amend or revise an existing package design, any associated documents and drawings submitted with the application, and any responses to NRC requests for additional information.

§ 71.11 [Reserved]

Subpart B—Exemptions

§ 71.12 Specific exemptions.

On application of any interested person or on its own initiative, the Commission may grant any exemption from the requirements of the regulations in this part that it determines is authorized by law and will not endanger life or property nor the common defense and security.

§ 71.13 Exemption of physicians.

Any physician licensed by a State to dispense drugs in the practice of medicine is exempt from § 71.5 with respect to transport by the physician of licensed material for use in the practice of medicine. However, any physician operating under this exemption must be licensed under 10 CFR part 35 or the equivalent Agreement State regulations.

§ 71.14 Exemption for low-level materials.

(a) A licensee is exempt from all the requirements of this part with respect to shipment or carriage of the following low-level materials:

(1) Natural material and ores containing naturally occurring radionuclides that are not intended to be processed for use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the values specified in Appendix A of this part.

(2) Materials for which the activity concentration is not greater than the activity concentration values specified in Appendix A of this part, or for which the consignment activity is not greater than the limit for an exempt consignment found in Appendix A of this part.

(b) A licensee is exempt from all the requirements of this part, other than §§ 71.5 and 71.88, with respect to shipment or carriage of the following packages, provided the packages do not contain any fissile material, or the material is exempt from classification as fissile material under § 71.15:

(1) The package contains no more than a Type A quantity of radioactive material. Exception: this paragraph does not apply to a package—transported within the United States—containing greater than an A_1 quantity (special form) of plutonium-244;

(2) The package—transported within the United States—contains no more than 0.74 TBq (20 Ci) of special form plutonium-244; or

(3) The package contains only LSA or SCO radioactive material, provided—

(i) That the LSA or SCO material has an external radiation dose of less than or equal to 10 mSv/h (1 rem/h), at a distance of 3 m from the unshielded material; or

(ii) That the package is classified as LSA–I or SCO–I.

(c) A licensee is exempt from all the requirements of this part, other than §§ 71.5 and 71.88, with respect to shipment or carriage of low-specific-activity (LSA) material in group LSA–I, or surface contaminated objects (SCOs) in group SCO–I.

§ 71.15 Exemption from classification as fissile material.

Fissile materials meeting the requirements of at least one of the paragraphs (a) through (e) of this section are exempt from classification as fissile material and from the fissile material package standards of §§ 71.55 and 71.59, but are subject to all other requirements of this part, except as noted.

(a) The mass ratio of iron to fissile material is greater than 200:1 and the package contents contain less than 15 g of fissile material. The fissile material may be contained in individual or bulk packaging.

(b) The mass ratio of noncombustible, insoluble-in-water, material (including both the contents and packaging) to fissile material is greater than 2000:1 and the package contents contain less than 350 g of fissile material. Lead, beryllium, graphite, and hydrogenous material enriched in deuterium may be present in the package, but must not be included in determining the mass ratio for the package. The fissile material may be contained in individual or bulk packaging.

(c) Uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium present in the package is less than 0.1 percent of the fissile mass.

(d) Liquid solutions of uranyl nitrate enriched in uranium-235 to a maximum of 2 percent by weight, provided that:

(1) The total plutonium and uranium-233 content does not exceed 0.1 percent of the mass of uranium-235;

(2) The nitrogen to uranium atomic ratio (N/U) is greater than or equal to 2.0; and

(3) The material must be contained in at least a DOT Type A package.

(e) Plutonium with a total mass of less than 1000 grams, provided that: plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 20 percent by mass of the total quantity of plutonium in the package.

§ 71.16 [Reserved]

Subpart C—General Licenses

§ 71.17 General license: NRC-approved package.

(a) A general license is hereby issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package (other than a Type B(DP) package) for which a license, certificate of compliance, or other approval has been issued by the NRC.

(b) This general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of this part.

(c) This general license applies only to a licensee who—

(1) Has a copy of the certificate of compliance, or other approval of the package, and has the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment;

(2) Complies with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of subparts A, G, and H of this part; and

(3) Submits in writing to the NRC, before the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval. A licensee shall submit this information in accordance with § 71.1.

(d) This general license applies only when the package approval authorizes use of the package under this general license.

(e) For a Type B or fissile material package, the design of which was approved by NRC before April 1, 1996, the general license is subject to the additional restrictions of § 71.19.

§ 71.18 General license: NRC-approved Type B(DP) package.

(a) A general license is hereby issued to any licensee of the Commission to

transport, or to deliver to a carrier for transport, licensed material in a Type B(DP) package for which a license, certificate of compliance (CoC), or other approval has been issued by the NRC.

(b) This general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of this part.

(c) This general license applies only to a licensee who—

(1) Has a copy of the CoC, or other approval, of the Type B(DP) package, a copy of the updated final safety analysis report for the package, and the drawings and other documents referenced in the CoC, or other approval, relating to the use and maintenance of the packaging and to the actions to be taken before shipment;

(2) Complies with the terms and conditions of the license, CoC, or other approval, as applicable, and the applicable requirements of subparts A, G, and H of this part; and

(3) Submits in writing to the NRC, before the licensee's first use of the package, the licensee's name and license number and the package identification number specified in the package approval. A licensee shall submit this information in accordance with § 71.1.

(d) This general license applies only when the package approval authorizes use of the Type B(DP) package under this general license.

(e) This general license does not authorize a Type B(DP) package to be transported by air.

§ 71.19 Previously approved package.

(a) A Type B package previously approved by NRC, but not designated as B(U), B(M), B(U)F, B(M)F, in the identification number of the NRC Certificate of Compliance, or Type AF packages approved by the NRC prior to September 6, 1983, may be used under the general license of § 71.17 until [date 3 years after the effective date of the final rule] with the following additional conditions:

(1) Fabrication of the packaging was satisfactorily completed by August 31, 1986, as demonstrated by application of its model number in accordance with § 71.85(c);

(2) A serial number that uniquely identifies each packaging which conforms to the approved design is assigned to, and legibly and durably marked on, the outside of each packaging; and

(3) § 71.19(a) will expire [date 3 years after the effective date of the final rule].

(b) A Type B(U) package, a Type B(M) package, or a fissile material package, previously approved by the NRC but without the designation ''-85'' in the identification number of the NRC Certificate of Compliance, may be used under the general license of § 71.17 with the following additional conditions:

(1) Fabrication of the package is satisfactorily completed by April 1, 1999, as demonstrated by application of its model number in accordance with § 71.85(c);

(2) A package used for a shipment to a location outside the United States is subject to multilateral approval as defined in DOT regulations at 49 CFR 173.403; and

(3) A serial number which uniquely identifies each packaging which conforms to the approved design is assigned to and legibly and durably marked on the outside of each packaging.

(c) A Type B(U) package, a Type B(M) package, or a fissile material package previously approved by the NRC, but without the designation ''-85'' in the identification number of the NRC Certificate of Compliance, may be used under the general license of § 71.17 with the following additional conditions:

(1) Fabrication of the package must be satisfactorily completed by December 31, 2006, as demonstrated by application of its model number in accordance with § 71.85(c); and

(2) After December 31, 2003, a package used for a shipment to a location outside the United States is subject to multilateral approval as defined in DOT regulations at 49 CFR 173.403.

(d) NRC will approve modifications to the design and authorized contents of a Type B package, or a fissile material package, previously approved by NRC, provided—

(1) The modifications of a Type B package are not significant with respect to the design, operating characteristics, or safe performance of the containment system, when the package is subjected to the tests specified in §§ 71.71 and 71.73;

(2) The modifications of a fissile material package are not significant, with respect to the prevention of criticality, when the package is subjected to the tests specified in §§ 71.71 and 71.73; and

(3) The modifications to the package satisfy the requirements of this part.

(e) NRC will revise the package identification number to designate previously approved package designs as B, BF, AF, B(U), B(M), B(U)F, B(M)F, B(U)–85, B(U)F–85, B(M)–85, B(M)F–85, or AF–85 as appropriate, and with the identification number suffix ''–96'' after receipt of an application demonstrating that the design meets the requirements of this part.

§ 71.20 General license: DOT specification container.

(a) A general license is issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a specification container for fissile material or for a Type B quantity of radioactive material as specified in DOT regulations at 49 CFR parts 173 and 178.

(b) This general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of this part.

(c) This general license applies only to a licensee who—

(1) Has a copy of the specification; and

(2) Complies with the terms and conditions of the specification and the applicable requirements of subparts A, G, and H of this part.

(d) This general license is subject to the limitation that the specification container may not be used for a shipment to a location outside the United States, except by multilateral approval, as defined in DOT regulations at 49 CFR 173.403.

§ 71.21 General license: Use of foreign approved package.

(a) A general license is issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package the design of which has been approved in a foreign national competent authority certificate that has been revalidated by DOT as meeting the applicable requirements of 49 CFR 171.12.

(b) Except as otherwise provided in this section, the general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the applicable provisions of subpart H of this part.

(c) This general license applies only to shipments made to or from locations outside the United States.

(d) This general license applies only to a licensee who—

(1) Has a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate, relating to the use and maintenance of the packaging and to the actions to be taken before shipment; and

(2) Complies with the terms and conditions of the certificate and revalidation, and with the applicable requirements of subparts A, G, and H of this part. With respect to the quality assurance provisions of subpart H of

this part, the licensee is exempt from design, construction, and fabrication considerations.

§ 71.22 General license: Fissile material.

(a) A general license is issued to any licensee of the Commission to transport fissile material, or to deliver fissile material to a carrier for transport, if the material is shipped in accordance with this section. The fissile material need not be contained in a package which meets the standards of subparts E and F of this part; however, the material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a).

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of this part.

(c) The general license applies only when a package's contents:

(1) Contain less than a Type A quantity of fissile material; and

(2) Contain less than 500 total grams of beryllium, graphite, or hydrogenous material enriched in deuterium.

(d) The general license applies only to packages containing fissile material that are labeled with a CSI which:

(1) Has been determined in accordance with paragraph (e) of this section;

(2) Has a value less than or equal to 10.0; and

(3) For a shipment of multiple packages containing fissile material, the sum of the CSIs must be less than or equal to 50.0 (for shipment on a nonexclusive use conveyance or storage incident to transport) and less than or equal to 100.0 (for shipment on an exclusive use conveyance).

(e)(1) The value for the CSI must be greater than or equal to the number calculated by the following equation:

$$\mathrm{CSI} = 10\left[\frac{\text{grams of } ^{235}\mathrm{U}}{\mathrm{X}} + \frac{\text{grams of } ^{233}\mathrm{U}}{\mathrm{Y}} + \frac{\text{grams of Pu}}{\mathrm{Z}}\right];$$

(2) The calculated CSI must be rounded up to the first decimal place;

(3) The values of X, Y, and Z used in the CSI equation must be taken from Tables 71–1 or 71–2, as appropriate;

(4) If Table 71–2 is used to obtain the value of X, then the values for the terms in the equation for uranium-233 and plutonium must be assumed to be zero; and

(5) Table 71–1 values for X, Y, and Z must be used to determine the CSI if:

(i) Uranium-233 is present in the package;

(ii) The mass of plutonium exceeds 1 percent of the mass of uranium-235;

(iii) The uranium-235 is of unknown enrichment; or

(iv) Substances having a moderating effectiveness (i.e., an average hydrogen density greater than H_2O) [e.g., certain hydrocarbon oils or plastics] are present in any form, except as polyethylene used for packing or wrapping.

TABLE 71–1.—MASS LIMITS FOR GENERAL LICENSE PACKAGES CONTAINING MIXED QUANTITIES OF FISSILE MATERIAL OR URANIUM-235 OF UNKNOWN ENRICHMENT PER § 71.22(E)

Fissile material	Fissile material mass mixed with moderating substances having an average hydrogen density less than or equal to H_2O. (grams)	Fissile material mass mixed with moderating substances having an average hydrogen density greater than H_2O [a].(grams)
^{235}U (X)	60	38
^{235}U (Y)	43	27
^{239}Pu or ^{241}Pu (Z)	37	24

[a]When mixtures of moderating substances are present, the lower mass limits shall be used if more than 15 percent of the moderating substance has an average hydrogen density greater than H_2O.

TABLE 71–2.—MASS LIMITS FOR GENERAL LICENSE PACKAGES CONTAINING URANIUM-235 OF KNOWN ENRICHMENT PER § 71.22(E)

Uranium enrichment in weight percent of ^{235}U not exceeding	Fissile material mass of ^{235}U (X). (grams)
24	60
20	63
15	67
11	72
10	76
9.5	78
9	81
8.5	82
8	85
7.5	88
7	90
6.5	93
6	97

TABLE 71–2.—MASS LIMITS FOR GENERAL LICENSE PACKAGES CONTAINING URANIUM-235 OF KNOWN ENRICHMENT PER § 71.22(E)—Continued

Uranium enrichment in weight percent of ^{235}U not exceeding	Fissile material mass of ^{235}U (X). (grams)
5.5	102
5	108
4.5	114
4	120
3.5	132
3	150
2.5	180
2	246
1.5	408
1.35	480
1	1,020

TABLE 71–2.—MASS LIMITS FOR GENERAL LICENSE PACKAGES CONTAINING URANIUM-235 OF KNOWN ENRICHMENT PER § 71.22(E)—Continued

Uranium enrichment in weight percent of ^{235}U not exceeding	Fissile material mass of ^{235}U (X). (grams)
0.92	1,800

§ 71.23 General license: Plutonium-beryllium special form material.

(a) A general license is issued to any licensee of the Commission to transport fissile material in the form of plutonium-beryllium (Pu-Be) special form sealed sources, or to deliver Pu-Be sealed sources to a carrier for transport, if the material is shipped in accordance

with this section. This material need not be contained in a package which meets the standards of subparts E and F of this part; however, the material must be contained in a Type A package. The Type A package must also meet the DOT requirements of 49 CFR 173.417(a).

(b) The general license applies only to a licensee who has a quality assurance program approved by the Commission as satisfying the provisions of subpart H of this part.

(c) The general license applies only when a package's contents:

(1) Contain less than a Type A quantity of material; and

(2) Contain less than 1000 g of plutonium, provided that: plutonium-239, plutonium-241, or any combination of these radionuclides, constitutes less than 240 g of the total quantity of plutonium in the package.

(d) The general license applies only to packages labeled with a CSI which:

(1) Has been determined in accordance with paragraph (e) of this section;

(2) Has a value less than or equal to 100.0; and

(3) For a shipment of multiple packages containing Pu-Be sealed sources, the sum of the CSIs must be less than or equal to 50.0 (for shipment on a nonexclusive use conveyance or storage incident to transport) and to less than or equal to 100.0 (for shipment on an exclusive use conveyance).

(e)(1) The value for the CSI must be greater than or equal to the number calculated by the following equation:

$$\mathrm{CSI} = 10\left[\frac{\text{grams of } {}^{239}\mathrm{Pu} + \text{grams of } {}^{241}\mathrm{Pu}}{24}\right]; \text{ and}$$

(2) The calculated CSI must be rounded up to the first decimal place.

§ 71.24 [Reserved]

§ 71.25 [Reserved]

3. In § 71.41, paragraph (a) is revised and a new paragraph (d) is added to read as follows:

§ 71.41 Demonstration of compliance.

(a) The effects on a package of the tests specified in § 71.71 (''Normal conditions of transport''), and the tests specified in § 71.73 (''Hypothetical accident conditions''), and § 71.61 (''Special requirements for Type B packages containing more than 10^5 A_2''), must be evaluated by subjecting a specimen or scale model to a specific test, or by another method of demonstration acceptable to the Commission, as appropriate for the particular feature being considered.

* * * * *

(d) Packages for which compliance with the other provisions of the regulations in this part is impracticable shall not be transported except under special package authorization. Provided the applicant demonstrates that compliance with the other provisions of the regulations is impracticable and that the requisite standards of safety established by these regulations have been demonstrated through means alternative to the other provisions, a special package authorization may be approved for one-time shipments. The applicant shall demonstrate that the overall level of safety in transport for these shipments is at least equivalent to that which would be provided if all the applicable requirements had been met.

4. In § 71.51, the introductory text of paragraph (a) is revised, and a new paragraph (d) is added to read as follows:

§ 71.51 Additional requirements for Type B packages.

(a) A Type B package, in addition to satisfying the requirements of §§ 71.41 through 71.47, must be designed, constructed, and prepared for shipment so that under the tests specified in:

* * * * *

(d) For packages which contain radioactive contents with activity greater than 10^5 A_2, the requirements of § 71.61 must be met. This requirement does not apply to Type B(DP) packages.

§ 71.53 [Reserved]

5. Section 71.53 is removed and reserved.

6. In § 71.55, paragraph (b) introductory text is revised, and new paragraphs (f) and (g) are added to read as follows:

§ 71.55 General requirements for fissile material packages.

* * * * *

(b) Except as provided in paragraph (c) or (g) of this section, a package used for the shipment of fissile material must be so designed and constructed and its contents so limited that it would be subcritical if water were to leak into the containment system, or liquid contents were to leak out of the containment system so that, under the following conditions, maximum reactivity of the fissile material would be attained:

* * * * *

(f) For fissile material package designs to be transported by air:

(1) The package must be designed and constructed, and its contents limited so that it would be subcritical, assuming reflection by 20 cm (7.9 in) of water but no water inleakage, when subjected to sequential application of:

(i) The free drop test in § 71.73(c)(1);

(ii) The crush test in § 71.73(c)(2);

(iii) A puncture test, for packages of 250 kg or more, consisting of a free drop of the specimen through a distance of 3 m (120 in) in a position for which maximum damage is expected at the conclusion of the test sequence, onto the upper end of a solid, vertical, cylindrical, mild steel probe mounted on an essentially unyielding, horizontal surface. The probe must be 20 cm (7.9 in) in diameter, with the striking end forming the frustum of a right circular cone with the dimensions of 30 cm height, 2.5 cm top diameter, and a top edge rounded to a radius of not more than 6 mm (0.25 in). For packages less than 250 kg, the puncture test must be the same, except that a 250 kg probe must be dropped onto the specimen which must be placed on the surface; and

(iv) The thermal test in § 71.73(c)(4), except that the duration of the test must be 60 minutes.

(2) The package must be designed and constructed, and its contents limited so that it would be subcritical, assuming reflection by 20 cm (7.9 in) of water but no water inleakage, when subjected to an impact on an unyielding surface at a velocity of 90 m/s normal to the surface, at such orientation so as to result in maximum damage. A separate, undamaged specimen can be used for this evaluation.

(3) Allowance may not be made for the special design features in paragraph (c) of this section, unless water leakage into or out of void spaces is prevented following application of the tests in paragraphs (f)(1) and (f)(2) of this section, and subsequent application of the immersion test in § 71.73(c)(5).

(g) Packages containing uranium hexafluoride only are excepted from the requirements of paragraph (b) of this section provided that:

(1) Following the tests specified in § 71.73 (''Hypothetical accident conditions''), there is no physical

contact between the valve body and any other component of the packaging, other than at its original point of attachment, and the valve remains leak tight;

(2) There is an adequate quality control in the manufacture, maintenance, and repair of packagings;

(3) Each package is tested to demonstrate closure before each shipment; and

(4) The uranium is enriched to not more than 5 weight percent uranium-235.

7. In § 71.59, paragraphs (b) and (c) are revised to read as follows:

§ 71.59 Standards for arrays of fissile material packages.

* * * * *

(b) The CSI must be determined by dividing the number 50 by the value of ''N'' derived using the procedures specified in paragraph (a) of this section. The value of the CSI may be zero provided that an unlimited number of packages are subcritical, such that the value of ''N'' is effectively equal to infinity under the procedures specified in paragraph (a) of this section. Any CSI greater than zero must be rounded up to the first decimal place.

(c) For a fissile material package which is assigned a CSI value—

(1) Less than or equal to 50.0, that package may be shipped by a carrier in a nonexclusive use conveyance, or stored incident to transport, provided the sum of the CSIs is limited to less than or equal to 50.0.

(2) Less than or equal to 50.0, that package may be shipped by a carrier in an exclusive use conveyance, provided the sum of the CSIs is limited to less than or equal to 100.0.

(3) Greater than 50.0, that package must be shipped by a carrier in an exclusive use conveyance, provided the sum of the CSIs is limited to less than or equal to 100.0.

8. Section 71.61 is revised to read as follows:

§ 71.61 Special requirements for Type B packages containing more than $10^5 A_2$.

A Type B package containing more than 10^5 A_2 must be designed so that its undamaged containment system can withstand an external water pressure of 2 MPa (290 psi) for a period of not less than 1 hour without collapse, buckling, or inleakage of water.

9. Section 71.63 is revised to read as follows:

§ 71.63 Special requirement for plutonium shipments.

Shipments containing plutonium must be made with the contents in solid form, if the contents contain greater than 0.74 TBq (20 Ci) of plutonium.

10. In § 71.73, paragraph (c)(2) is revised to read as follows:

§ 71.73 Hypothetical accident conditions.

* * * * *

(c)* * *

(2) *Crush.* Subjection of the specimen to a dynamic crush test by positioning the specimen on a flat, essentially unyielding horizontal surface so as to suffer maximum damage by the drop of a 500-kg (1100-lb) mass from 9 m (30 ft) onto the specimen. The mass must consist of a solid mild steel plate 1 m (40 in) by 1 m and must fall in a horizontal attitude. The crush test is required only when the specimen has a mass not greater than 500 kg (1100 lbs), an overall density not greater than 1000 kg/m^3 (62.4 lbs/ft^3) based on external dimension, and radioactive contents greater than 1000 A^2 not as special form radioactive material. For packages containing fissile material, the radioactive contents greater than 1000 A^2 criterion does not apply.

* * * * *

11. In § 71.88, paragraph (a)(2) is revised to read as follows:

§ 71.88 Air transport of plutonium.

(a) * * *

(2) The plutonium is contained in a material in which the specific activity is less than or equal to the activity concentration values for plutonium specified in Appendix A, Table A–2 of this part, and in which the radioactivity is essentially uniformly distributed; or

* * * * *

12. In § 71.91, paragraphs (b) and (c) are revised, and a new paragraph (d) is added to read as follows:

§ 71.91 Records.

* * * * *

(b) Each certificate holder shall maintain, for a period of 3 years after the life of the packaging to which they apply, records identifying the packaging by model number, serial number, and date of manufacture.

(c) The licensee, certificate holder, and an applicant for a CoC, shall make available to the Commission for inspection, upon reasonable notice, all records required by this part. Records are only valid if stamped, initialed, or signed and dated by authorized personnel or otherwise authenticated.

(d) The licensee, certificate holder, and an applicant for a CoC shall maintain sufficient written records to furnish evidence of the quality of packaging. The records to be maintained include results of the determinations required by § 71.85; design, fabrication, and assembly records, results of reviews, inspections, tests, and audits; results of monitoring work performance and materials analyses; and results of maintenance, modification, and repair activities. Inspection, test, and audit records must identify the inspector or data recorder, the type of observation, the results, the acceptability, and the action taken in connection with any deficiencies noted. These records must be retained for 3 years after the life of the packaging to which they apply.

13. Section 71.93 is revised to read as follows:

§ 71.93 Inspection and tests.

(a) The licensee, certificate holder, and applicant for a CoC shall permit the Commission, at all reasonable times, to inspect the licensed material, packaging, premises, and facilities in which the licensed material or packaging is used, provided, constructed, fabricated, tested, stored, or shipped.

(b) The licensee, certificate holder, and applicant for a CoC shall perform, and permit the Commission to perform, any tests the Commission deems necessary or appropriate for the administration of the regulations in this chapter.

(c) The certificate holder and applicant for a CoC shall notify the NRC, in accordance with § 71.1, 45 days in advance of starting fabrication of the first packaging under a CoC. This paragraph applies to any packaging used for the shipment of licensed material which has either—

(1) A decay heat load in excess of 5 kW; or

(2) A maximum normal operating pressure in excess of 103 kPa (15 lbf/in^2) gauge.

14. Section 71.95 is revised to read as follows:

§ 71.95 Reports.

(a) The licensee, after requesting the certificate holder's input, shall submit a written report to the Commission of'

(1) Instances in which there is a significant reduction in the effectiveness of any NRC-approved Type B or Type A(F) packaging during use; or

(2) Details of any defects with safety significance in any NRC-approved Type B or fissile material packaging, after first use.

(b) The licensee shall submit a written report to the Commission of instances in which the conditions in the certificate of compliance were not followed during a shipment.

(c) *Written report.* Each licensee shall submit, in accordance with § 71.1, a written report required by paragraph (a) or (b) of this section within 60 days of the event or discovery of the event. The licensee shall also provide a copy of

each report submitted to the NRC to the applicable certificate holder. Written reports prepared pursuant to other regulations may be submitted to fulfill this requirement if the reports contain all the necessary information, and the appropriate distribution is made. These written reports must include the following:

(1) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence.

(2) A clear, specific, narrative description of the event that occurred so that knowledgeable readers conversant with the requirements of Part 71, but not familiar with the design of the packaging, can understand the complete event. The narrative description must include the following specific information as appropriate for the particular event.

(i) Status of components or systems that were inoperable at the start of the event and that contributed to the event;

(ii) Dates and approximate times of occurrences;

(iii) The cause of each component or system failure or personnel error, if known;

(iv) The failure mode, mechanism, and effect of each failed component, if known;

(v) A list of systems or secondary functions that were also affected for failures of components with multiple functions;

(vi) The method of discovery of each component or system failure or procedural error;

(vii) For each human performance-related root cause, a discussion of the cause(s) and circumstances; (viii) The manufacturer and model number (or other identification) of each component that failed during the event; and

(ix) For events occurring during use of a packaging, the quantities and chemical and physical form(s) of the package contents.

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event.

(4) A description of any corrective actions planned as a result of the event, including the means employed to repair any defects, and actions taken to reduce the probability of similar events occurring in the future.

(5) Reference to any previous similar events involving the same packaging that are known to the licensee or certificate holder.

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information.

(7) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name.

(d) *Report legibility.* The reports submitted by licensees and/or certificate holders under this section must be of sufficient quality to permit reproduction and micrographic processing.

15. In § 71.100, paragraph (b) is revised to read as follows:

§ 71.100 Criminal penalties.

* * * * *

(b) The regulations in part 71 that are not issued under sections 161b, 161i, or 161o for the purposes of section 223 are as follows: §§ 71.0, 71.2, 71.4, 71.6, 71.7, 71.10, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.40, 71.41, 71.43, 71.45, 71.47, 71.51, 71.55, 71.59, 71.65, 71.71, 71.73, 71.74, 71.75, 71.77, 71.99, 71.100, and 71.151 through 71.169.

16. Subpart H to Part 71 is revised to read as follows:

Subpart H—Quality Assurance

Sec.

71.101 Quality assurance requirements.
71.103 Quality assurance organization.
71.105 Quality assurance program.
71.107 Package design control.
71.109 Procurement document control.
71.111 Instructions, procedures, and drawings.
71.113 Document control.
71.115 Control of purchased material, equipment, and services.
71.117 Identification and control of materials, parts, and components.
71.119 Control of special processes.
71.121 Internal inspection.
71.123 Test control.
71.125 Control of measuring and test equipment.
71.127 Handling, storage, and shipping control.
71.129 Inspection, test, and operating status.
71.131 Nonconforming materials, parts, or components.
71.133 Corrective action.
71.135 Quality assurance records.
71.137 Audits.

Subpart H—Quality Assurance

§ 71.101 Quality assurance requirements.

(a) *Purpose.* This subpart describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety. As used in this subpart, ''quality assurance'' comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements. The licensee, certificate holder, and applicant for a CoC are responsible for the quality assurance requirements as they apply to design, fabrication, testing, and modification of packaging. Each licensee is responsible for the quality assurance provision which applies to its use of a packaging for the shipment of licensed material subject to this subpart.

(b) *Establishment of program.* Each licensee, certificate holder, and applicant for a CoC shall establish, maintain, and execute a quality assurance program satisfying each of the applicable criteria of §§ 71.101 through 71.137 and satisfying any specific provisions that are applicable to the licensee's activities including procurement of packaging. The licensee, certificate holder, and applicant for a CoC shall execute the applicable criteria in a graded approach to an extent that is commensurate with the quality assurance requirement's importance to safety.

(c) *Approval of program.* (1) Before the use of any package for the shipment of licensed material subject to this subpart, each licensee shall obtain Commission approval of its quality assurance program. Each licensee shall, in accordance with § 71.1, file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied.

(2) Before the fabrication, testing, or modification of any package for the shipment of licensed material subject to this subpart, each licensee, certificate holder, or applicant for a CoC shall obtain Commission approval of its quality assurance program. Each certificate holder or applicant for a CoC shall, in accordance with § 71.1, file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied.

(d) *Existing package designs.* The provisions of this paragraph deal with packages that have been approved for use in accordance with this part before January 1, 1979, and which have been

designed in accordance with the provisions of this part in effect at the time of application for package approval. Those packages will be accepted as having been designed in accordance with a quality assurance program that satisfies the provisions of paragraph (b) of this section.

(e) *Existing packages.* The provisions of this paragraph deal with packages that have been approved for use in accordance with this part before January 1, 1979, have been at least partially fabricated before that date, and for which the fabrication is in accordance with the provisions of this part in effect at the time of application for approval of package design. These packages will be accepted as having been fabricated and assembled in accordance with a quality assurance program that satisfies the provisions of paragraph (b) of this section.

(f) *Previously approved programs.* A Commission-approved quality assurance program that satisfies the applicable criteria of subpart H of this part, Appendix B of part 50 of this chapter, or subpart G of part 72 of this chapter, and that is established, maintained, and executed regarding transport packages, will be accepted as satisfying the requirements of paragraph (b) of this section. Before first use, the licensee, certificate holder, and applicant for a CoC shall notify the NRC, in accordance with § 71.1, of its intent to apply its previously approved subpart H, Appendix B, or subpart G quality assurance program to transportation activities. The licensee, certificate holder, and applicant for a CoC shall identify the program by date of submittal to the Commission, Docket Number, and date of Commission approval.

(g) *Radiography containers.* A program for transport container inspection and maintenance limited to radiographic exposure devices, source changers, or packages transporting these devices and meeting the requirements of § 34.31(b) of this chapter or equivalent Agreement State requirement, is deemed to satisfy the requirements of §§ 71.17(b) and 71.101(b).

§ 71.103 Quality assurance organization.

(a) The licensee,[2] certificate holder, and applicant for a CoC shall be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a CoC may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. The licensee, certificate holder, and applicant for a CoC shall clearly establish and delineate, in writing, the authority and duties of persons and organizations performing activities affecting the functions of structures, systems, and components that are important to safety. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

(b) The quality assurance functions are—

(1) Assuring that an appropriate quality assurance program is established and effectively executed; and

(2) Verifying, by procedures such as checking, auditing, and inspection, that activities affecting the functions that are important to safety have been correctly performed.

(c) The persons and organizations performing quality assurance functions must have sufficient authority and organizational freedom to—

(1) Identify quality problems;

(2) Initiate, recommend, or provide solutions; and

(3) Verify implementation of solutions.

(d) The persons and organizations performing quality assurance functions shall report to a management level that assures that the required authority and organizational freedom, including sufficient independence from cost and schedule, when opposed to safety considerations, are provided.

(e) Because of the many variables involved, such as the number of personnel, the type of activity being performed, and the location or locations where activities are performed, the organizational structure for executing the quality assurance program may take various forms, provided that the persons and organizations assigned the quality assurance functions have the required authority and organizational freedom.

(f) Irrespective of the organizational structure, the individual(s) assigned the responsibility for assuring effective execution of any portion of the quality assurance program, at any location where activities subject to this section are being performed, must have direct access to the levels of management necessary to perform this function.

§ 71.105 Quality assurance program.

(a) The licensee, certificate holder, and applicant for a CoC shall establish, at the earliest practicable time consistent with the schedule for accomplishing the activities, a quality assurance program that complies with the requirements of §§ 71.101 through 71.137. The licensee, certificate holder, and applicant for a CoC shall document the quality assurance program by written procedures or instructions and shall carry out the program in accordance with those procedures throughout the period during which the packaging is used. The licensee, certificate holder, and applicant for a CoC shall identify the material and components to be covered by the quality assurance program, the major organizations participating in the program, and the designated functions of these organizations.

(b) The licensee, certificate holder, and applicant for a CoC, through its quality assurance program, shall provide control over activities affecting the quality of the identified materials and components to an extent consistent with their importance to safety, and as necessary to assure conformance to the approved design of each individual package used for the shipment of radioactive material. The licensee, certificate holder, and applicant for a CoC shall assure that activities affecting quality are accomplished under suitably controlled conditions. Controlled conditions include the use of appropriate equipment; suitable environmental conditions for accomplishing the activity, such as adequate cleanliness; and assurance that all prerequisites for the given activity have been satisfied. The licensee, certificate holder, and applicant for a CoC shall take into account the need for special controls, processes, test equipment, tools, and skills to attain the required quality, and the need for verification of quality by inspection and test.

(c) The licensee, certificate holder, and applicant for a CoC shall base the requirements and procedures of its quality assurance program on the following considerations concerning the complexity and proposed use of the package and its components:

(1) The impact of malfunction or failure of the item to safety;

(2) The design and fabrication complexity or uniqueness of the item;

(3) The need for special controls and surveillance over processes and equipment;

(4) The degree to which functional compliance can be demonstrated by inspection or test; and

(5) The quality history and degree of standardization of the item.

[2] While the term ''licensee'' is used in these criteria, the requirements are applicable to whatever design, fabrication, assembly, and testing of the package is accomplished with respect to a package before the time a package approval is issued.

(d) The licensee, certificate holder, and applicant for a CoC shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary to assure that suitable proficiency is achieved and maintained. The licensee, certificate holder, and applicant for a CoC shall review the status and adequacy of the quality assurance program at established intervals. Management of other organizations participating in the quality assurance program shall review regularly the status and adequacy of that part of the quality assurance program they are executing.

§ 71.107 Package design control.

(a) The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that applicable regulatory requirements and the package design, as specified in the license or CoC for those materials and components to which this section applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must include provisions to assure that appropriate quality standards are specified and included in design documents and that deviations from standards are controlled. Measures must be established for the selection and review for suitability of application of materials, parts, equipment, and processes that are essential to the functions of the materials, parts, and components of the packaging that are important to safety.

(b) The licensee, certificate holder, and applicant for a CoC shall establish measures for the identification and control of design interfaces and for coordination among participating design organizations. These measures must include the establishment of written procedures, among participating design organizations, for the review, approval, release, distribution, and revision of documents involving design interfaces. The design control measures must provide for verifying or checking the adequacy of design, by methods such as design reviews, alternate or simplified calculational methods, or by a suitable testing program. For the verifying or checking process, the licensee shall designate individuals or groups other than those who were responsible for the original design, but who may be from the same organization. Where a test program is used to verify the adequacy of a specific design feature in lieu of other verifying or checking processes, the licensee, certificate holder, and applicant for a CoC shall include suitable qualification testing of a prototype or sample unit under the most adverse design conditions. The licensee, certificate holder, and applicant for a CoC shall apply design control measures to the following:

(1) Criticality physics, radiation shielding, stress, thermal, hydraulic, and accident analyses;

(2) Compatibility of materials;

(3) Accessibility for inservice inspection, maintenance, and repair;

(4) Features to facilitate decontamination; and

(5) Delineation of acceptance criteria for inspections and tests.

(c) The licensee, certificate holder, and applicant for a CoC shall subject design changes, including field changes, to design control measures commensurate with those applied to the original design. Changes in the conditions specified in the CoC require NRC prior approval.

§ 71.109 Procurement document control.

The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that adequate quality is required in the documents for procurement of material, equipment, and services, whether purchased by the licensee, certificate holder, and applicant for a CoC or by its contractors or subcontractors. To the extent necessary, the licensee, certificate holder, and applicant for a CoC shall require contractors or subcontractors to provide a quality assurance program consistent with the applicable provisions of this part.

§ 71.111 Instructions, procedures, and drawings.

The licensee, certificate holder, and applicant for a CoC shall prescribe activities affecting quality by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall require that these instructions, procedures, and drawings be followed. The instructions, procedures, and drawings must include appropriate quantitative or qualitative acceptance criteria for determining that important activities have been satisfactorily accomplished.

§ 71.113 Document control.

The licensee, certificate holder, and applicant for a CoC shall establish measures to control the issuance of documents such as instructions, procedures, and drawings, including changes, that prescribe all activities affecting quality. These measures must assure that documents, including changes, are reviewed for adequacy, approved for release by authorized personnel, and distributed and used at the location where the prescribed activity is performed.

§ 71.115 Control of purchased material, equipment, and services.

(a) The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that purchased material, equipment, and services, whether purchased directly or through contractors and subcontractors, conform to the procurement documents. These measures must include provisions, as appropriate, for source evaluation and selection, objective evidence of quality furnished by the contractor or subcontractor, inspection at the contractor or subcontractor source, and examination of products on delivery.

(b) The licensee, certificate holder, and applicant for a CoC shall have available documentary evidence that material and equipment conform to the procurement specifications before installation or use of the material and equipment. The licensee, certificate holder, and applicant for a CoC shall retain, or have available, this documentary evidence for the life of the package to which it applies. The licensee, certificate holder, and applicant for a CoC shall assure that the evidence is sufficient to identify the specific requirements met by the purchased material and equipment.

(c) The licensee, certificate holder, and applicant for a CoC shall assess the effectiveness of the control of quality by contractors and subcontractors at intervals consistent with the importance, complexity, and quantity of the product or services.

§ 71.117 Identification and control of materials, parts, and components.

The licensee, certificate holder, and applicant for a CoC shall establish measures for the identification and control of materials, parts, and components. These measures must assure that identification of the item is maintained by heat number, part number, or other appropriate means, either on the item or on records traceable to the item, as required throughout fabrication, installation, and use of the item. These identification and control measures must be designed to prevent the use of incorrect or defective materials, parts, and components.

§ 71.119 Control of special processes.

The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that special processes, including welding, heat treating, and nondestructive testing, are controlled and accomplished by qualified personnel using qualified procedures in accordance with applicable codes, standards,

specifications, criteria, and other special requirements.

§ 71.121 Internal inspection.

The licensee, certificate holder, and applicant for a CoC shall establish and execute a program for inspection of activities affecting quality by or for the organization performing the activity, to verify conformance with the documented instructions, procedures, and drawings for accomplishing the activity. The inspection must be performed by individuals other than those who performed the activity being inspected. Examination, measurements, or tests of material or products processed must be performed for each work operation where necessary to assure quality. If direct inspection of processed material or products is not carried out, indirect control by monitoring processing methods, equipment, and personnel must be provided. Both inspection and process monitoring must be provided when quality control is inadequate without both. If mandatory inspection hold points, which require witnessing or inspecting by the licensee's designated representative and beyond which work should not proceed without the consent of its designated representative, are required, the specific hold points must be indicated in appropriate documents.

§ 71.123 Test control.

The licensee, certificate holder, and applicant for a CoC shall establish a test program to assure that all testing required to demonstrate that the packaging components will perform satisfactorily in service is identified and performed in accordance with written test procedures that incorporate the requirements of this part and the requirements and acceptance limits contained in the package approval. The test procedures must include provisions for assuring that all prerequisites for the given test are met, that adequate test instrumentation is available and used, and that the test is performed under suitable environmental conditions. The licensee, certificate holder, and applicant for a CoC shall document and evaluate the test results to assure that test requirements have been satisfied.

§ 71.125 Control of measuring and test equipment.

The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that tools, gauges, instruments, and other measuring and testing devices used in activities affecting quality are properly controlled, calibrated, and adjusted at specified times to maintain accuracy within necessary limits.

§ 71.127 Handling, storage, and shipping control.

The licensee, certificate holder, and applicant for a CoC shall establish measures to control, in accordance with instructions, the handling, storage, shipping, cleaning, and preservation of materials and equipment to be used in packaging to prevent damage or deterioration. When necessary for particular products, special protective environments, such as inert gas atmosphere, and specific moisture content and temperature levels must be specified and provided.

§ 71.129 Inspection, test, and operating status.

(a) The licensee, certificate holder, and applicant for a CoC shall establish measures to indicate, by the use of markings such as stamps, tags, labels, routing cards, or other suitable means, the status of inspections and tests performed upon individual items of the packaging. These measures must provide for the identification of items that have satisfactorily passed required inspections and tests, where necessary to preclude inadvertent bypassing of the inspections and tests.

(b) The licensee shall establish measures to identify the operating status of components of the packaging, such as tagging valves and switches, to prevent inadvertent operation.

§ 71.131 Nonconforming materials, parts, or components.

The licensee, certificate holder, and applicant for a CoC shall establish measures to control materials, parts, or components that do not conform to the licensee's requirements to prevent their inadvertent use or installation. These measures must include, as appropriate, procedures for identification, documentation, segregation, disposition, and notification to affected organizations. Nonconforming items must be reviewed and accepted, rejected, repaired, or reworked in accordance with documented procedures.

§ 71.133 Corrective action.

The licensee, certificate holder, and applicant for a CoC shall establish measures to assure that conditions adverse to quality, such as deficiencies, deviations, defective material and equipment, and nonconformances, are promptly identified and corrected. In the case of a significant condition adverse to quality, the measures must assure that the cause of the condition is determined and corrective action taken to preclude repetition. The identification of the significant condition adverse to quality, the cause of the condition, and the corrective action taken must be documented and reported to appropriate levels of management.

§ 71.135 Quality assurance records.

The licensee, certificate holder, and applicant for a CoC shall maintain sufficient written records to describe the activities affecting quality. The records must include the instructions, procedures, and drawings required by § 71.111 to prescribe quality assurance activities and must include closely related specifications such as required qualifications of personnel, procedures, and equipment. The records must include the instructions or procedures which establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility. The licensee, certificate holder, and applicant for a CoC shall retain these records for 3 years beyond the date when the licensee, certificate holder, and applicant for a CoC last engage in the activity for which the quality assurance program was developed. If any portion of the written procedures or instructions is superseded, the licensee, certificate holder, and applicant for a CoC shall retain the superseded material for 3 years after it is superseded.

§ 71.137 Audits.

The licensee, certificate holder, and applicant for a CoC shall carry out a comprehensive system of planned and periodic audits, to verify compliance with all aspects of the quality assurance program, and to determine the effectiveness of the program. The audits must be performed in accordance with written procedures or checklists by appropriately trained personnel not having direct responsibilities in the areas being audited. Audited results must be documented and reviewed by management having responsibility in the area audited. Follow-up action, including reaudit of deficient areas, must be taken where indicated.

17. A new subpart I is added to Part 71 to read as follows:

Subpart I—Type B(DP) Package Approval

Sec.

71.151 Procedures for applying for a Type B(DP) package approval.
71.153 Contents of application.
71.155 Package description.
71.157 Package evaluation.
71.159 Quality assurance.
71.161 Requirement for additional information.

71.163 Issuance of an NRC certificate of compliance.
71.165 Conditions for package reapproval.
71.167 Application to amend a certificate of compliance.
71.169 Issuance of an amendment to a certificate of compliance.
71.171 Inspections and tests.
71.173 Recordkeeping and reports.
71.175 Changes.
71.177 Safety analysis report updating.

Subpart I—Type B(DP) Package Approval

§ 71.151 Procedures for applying for a Type B(DP) package approval.

(a) Spent fuel storage casks that have been issued a Certificate of Compliance (CoC) under subpart L of part 72 of this chapter may also be approved under this subpart as a Type B(DP) package for the transportation of spent fuel. A copy of the part 72 CoC issued for the cask, and any drawings and other documents referenced in the part 72 CoC, must be included with the application.

(b) An application for approval of a Type B(DP) package design must contain the information required by § 71.153 and be submitted in accordance with § 71.1.

(c) *Public inspection.* An application for the approval of a Type B(DP) package, or amendment of a Type B(DP) package, may be made available for public inspection under § 71.10.

(d) *Fees.* Fees for reviews and evaluations related to issuance of a Type B(DP) CoC and inspections related to package fabrication are those shown in § 170.31 of this chapter.

§ 71.153 Contents of application.

(a) An application for an approval of a Type B(DP) package under this subpart must include, for each proposed Type B(DP) packaging design, the following information:

(1) A package description as required by § 71.155;

(2) A package evaluation as required by § 71.157; and

(3) A quality assurance program description, as required by § 71.159, or a reference to a previously approved quality assurance program.

(b) A safety analysis report describing—

(1) The proposed Type B(DP) package design;

(2) How the package would be used to transport spent fuel safely;

(3) An analysis of potential accidents, package response to these potential accidents, and any consequences to the public; and

(4) How the package is suitable for the transportation of spent fuel for a period of at least 20 years.

(c) Except as provided in § 71.19, an application for modification of a Type B(DP) package design, whether for modification of the packaging or the authorized contents, must include sufficient information to demonstrate that the proposed design satisfies the Type B(DP) package standards in effect at the time the application is filed.

(d) The applicant shall identify any established codes and standards proposed for use in package design, fabrication, assembly, testing, maintenance, and use. In the absence of any codes and standards, the applicant shall describe and justify the basis and rationale used to formulate the package quality assurance program.

§ 71.155 Package description.

The application must include a description of the proposed Type B(DP) package in sufficient detail to identify the Type B(DP) package accurately and provide a sufficient basis for evaluation of the Type B(DP) package. The description must include—

(a) With respect to the packaging—

(1) Gross weight;

(2) Model number;

(3) Identification of the containment system;

(4) Specific materials of construction, weights, dimensions, and fabrication methods of—

(i) Receptacles;

(ii) Materials specifically used as nonfissile neutron absorbers or moderators;

(iii) Internal and external structures supporting or protecting receptacles;

(iv) Valves, sampling ports, lifting devices, and tie-down devices; and

(v) Structural and mechanical means for the transfer and dissipation of heat; and

(5) Identification and volumes of any receptacles containing coolant.

(b) With respect to the contents of the package—

(1) Identification and maximum radioactivity of radioactive constituents;

(2) Identification and maximum quantities of fissile constituents;

(3) Chemical and physical form;

(4) Extent of reflection, the amount and identity of nonfissile materials used as neutron absorbers or moderators, and the atomic ratio of moderator to fissile constituents;

(5) Maximum normal operating pressure;

(6) Maximum weight;

(7) Maximum amount of decay heat; and

(8) Identification and volumes of any coolants.

§ 71.157 Package evaluation.

The application submitted under § 71.151 must include the following:

(a) A demonstration that the Type B(DP) package satisfies the standards specified in subparts E and F of this part. The application need not address the requirements of §§ 71.61, 71.64, 71.74, 71.75, and 71.77;

(b) The number ''N'' for the Type B(DP) package as determined in accordance with § 71.59; and

(c) Any proposed special controls and precautions for transport, loading, unloading, and handling, and any proposed special controls in case of an accident or delay.

§ 71.159 Quality assurance.

(a) The applicant shall describe the quality assurance program (see subpart H of this part) for the design, fabrication, assembly, testing, maintenance, repair, modification, and use of the proposed Type B(DP) package.

(b) The applicant shall identify any specific provisions of the quality assurance program that are applicable to the particular Type B(DP) package design under consideration, including a description of any leak testing.

§ 71.161 Requirement for additional information.

The Commission may at any time require additional information to enable it to determine whether a license, CoC, or other approval should be granted, renewed, denied, modified, suspended, or revoked.

§ 71.163 Issuance of an NRC certificate of compliance.

The NRC will issue a CoC for a Type B(DP) package on a finding that the requirements in §§ 71.151 through 71.159 are met. The term of a Type B(DP) CoC is to up to 20 years.

§ 71.165 Conditions for package reapproval.

(a) Except as provided in paragraph (b) of this section, each CoC for a Type B(DP) package or Quality Assurance Program Approval expires at the end of the day, in the month and year stated in the approval.

(b) Timely renewal. If a person holding a CoC for a Type B(DP) package or Quality Assurance Program Approval issued under this part has filed a proper application requesting renewal of either the CoC or the Quality Assurance Program Approval, then the CoC or Quality Assurance Program Approval is not considered to have expired until the Commission has taken final action on the application. The application must be submitted to the Commission not less

than 2 years before the expiration of the CoC or the Quality Assurance Program Approval.

(c) In applying for renewal of an existing CoC for a Type B(DP) package or Quality Assurance Program Approval, an applicant may be required to submit a consolidated application that incorporates all changes to its program—that are incorporated by reference in the existing approval or certificate—into as few referenceable documents as reasonably achievable.

(d) Applications for renewal of an existing CoC for a Type B(DP) package or Quality Assurance Program Approval must be submitted to the Commission in accordance with § 71.1.

§ 71.167 Application to amend a certificate of compliance.

A certificate holder desiring to amend its CoC for a Type B(DP) package—including a change to the terms, conditions, or specifications of the CoC—shall submit an application for amendment with the Commission, in accordance with § 71.1. The application must fully describe the changes desired and the reasons for these changes. The application should follow, as far as applicable, the form prescribed for an original application in § 71.151.

§ 71.169 Issuance of an amendment to a certificate of compliance.

In determining whether an amendment to a CoC for a Type B(DP) package will be issued to the applicant, the Commission will be guided by the considerations that govern the issuance of an initial CoC.

§ 71.171 Inspections and tests.

(a) The certificate holder and applicant for a CoC for a Type B(DP) package shall permit, and make provisions for, the NRC to inspect the premises and facilities where a Type B(DP) package is designed, fabricated, and tested.

(b) The certificate holder and applicant for a CoC for a Type B(DP) package shall make available to the NRC for inspection, upon reasonable notice, records kept by them pertaining to the design, fabrication, and testing of a Type B(DP) package.

(c) The certificate holder and applicant for a CoC for a Type B(DP) package shall perform and make provisions that permit the NRC to perform tests that the Commission deems necessary or appropriate for the administration of the regulations in this part.

§ 71.173 Recordkeeping and reports.

(a) Each certificate holder or applicant shall maintain any records and produce any reports that may be required by the conditions of the CoC or by the rules, regulations, and orders of the NRC in effectuating the purposes of the Act.

(b) Records that are required by the regulations in this part or by conditions of the CoC must be maintained for the period specified by the appropriate regulation or the CoC conditions. If a retention period is not specified, the records must be maintained until the NRC terminates the CoC.

(c) Any record maintained under this part may be either the original or a reproduced copy by any state-of-the-art method provided that any reproduced copy is duly authenticated by authorized personnel and is capable of producing a clear and legible copy after storage for the period specified by NRC regulations.

(d) Each certificate holder shall maintain a record of each Type B(DP) package it has manufactured. The record must contain the following information:

(1) The package identification number;

(2) The package serial number;

(3) The date fabrication of the package was commenced; and

(4) The date fabrication of the package was completed.

§ 71.175 Changes.

(a) Definitions for the purposes of this section:

(1) *Change* means a modification or addition to, or removal from, a Type B(DP) package design or procedures that affect a design function, method of performing or controlling the function, or an evaluation that demonstrates that intended functions will be accomplished.

(2) *Departure from a method of evaluation described in the Final Safety Analysis Report (FSAR) (as updated) used in establishing the design bases or in the safety analyses* means:

(i) Changing any of the elements of the method described in the FSAR (as updated) unless the results of the analysis are conservative or essentially the same; or

(ii) Changing from a method described in the FSAR to another method unless that method has been approved by NRC for the intended application.

(3) *A Type B(DP) package design as described in the FSAR (as updated)* means:

(i) The structures, systems, and components (SSC) that are described in the FSAR (as updated),

(ii) The design and performance requirements for such SSCs described in the FSAR (as updated), and

(iii) The evaluations or methods of evaluation included in the FSAR (as updated) for such SSCs which demonstrate that their intended function(s) will be accomplished.

(4) *Final Safety Analysis Report (as updated)* means the Safety Analysis Report for a Type B(DP) package design as submitted, amended, and updated in accordance with § 71.177.

(5) *Procedures as described in the FSAR (as updated)* means those procedures that contain information described in the safety analysis report such as how SSCs are operated and controlled (including assumed operator actions and response times).

(b) This section applies to each holder of a CoC for Type B(DP) package issued under this subpart.

(c)(1) A certificate holder may make changes to a Type B(DP) package design, as described in the FSAR (as updated), and make changes in the procedures, as described in the FSAR (as updated), without obtaining a CoC amendment under § 71.167 if:

(i) A change in the terms, conditions, or specifications incorporated in the CoC is not required; and

(ii) The change does not meet any of the criteria in paragraph (c)(2) of this section.

(2) A certificate holder shall obtain a CoC amendment under § 71.167 before implementing a proposed change, if the change would:

(i) Result in more than a minimal increase in the frequency of occurrence of an accident previously evaluated in the FSAR (as updated);

(ii) Result in more than a minimal increase in the likelihood of occurrence of a malfunction of a system, structure, or component (SSC) important to safety previously evaluated in the FSAR (as updated);

(iii) Result in more than a minimal increase in the consequences of an accident previously evaluated in the FSAR (as updated);

(iv) Result in more than a minimal increase in the consequences of a malfunction of an SSC important to safety previously evaluated in the FSAR (as updated);

(v) Create a possibility for an accident of a different type than any previously evaluated in the FSAR (as updated);

(vi) Create a possibility for a malfunction of an SSC important to safety with a different result than any previously evaluated in the FSAR (as updated);

(vii) Result in a design basis limit for a fission product barrier as described in the FSAR (as updated) being exceeded or altered; or

(viii) Result in a departure from a method of evaluation described in the FSAR (as updated) used in establishing

the design bases or in the safety analyses.

(3) In implementing this paragraph, the FSAR (as updated) is considered to include FSAR changes resulting from evaluations performed under this section and analyses performed under § 71.161, since the last update of the FSAR as required by § 71.177.

(4) The provisions in this section do not apply to changes to procedures when the applicable regulations of this part establish more specific criteria for accomplishing such changes.

(d)(1) The certificate holder shall maintain records of changes to a Type B(DP) package and of changes in procedures made under paragraph (c) of this section. These records must include a written evaluation that provides the bases for the determination that the change does not require a CoC amendment under paragraph (c)(2) of this section.

(2) The certificate holder shall submit, as specified in § 71.1, a report containing a brief description of any changes, including a summary of the evaluation of each. A report must be submitted at intervals not to exceed 24 months.

(3) The records of changes in a Type B(DP) package design must be maintained until:

(i) The Commission terminates the CoC issued under this part; or

(ii) The package is permanently removed from service.

(4) The records of changes in procedures must be maintained for a period of 5 years.

(5) The holder of a Type B(DP) package design CoC, who permanently ceases operation, shall provide the records of changes to the new certificate holder or to the Commission, in accordance with § 71.1, as appropriate.

(6) A certificate holder shall provide a copy of the record for any changes to a Type B(DP) package design to any licensee using the package design within 60 days of implementing the change.

§ 71.177 Safety analysis report updating.

(a) Each certificate holder for a Type B(DP) package approved under this subpart shall update periodically, as provided in paragraph (b) of this section, the final safety analysis report (FSAR) to assure that the information included in the report contains the latest information developed.

(1) Each certificate holder shall submit an original FSAR to the Commission, in accordance with § 71.1, within 90 days after the Type B(DP) package design has been approved under § 71.163.

(2) The original FSAR must be based on the safety analysis report submitted with the application and reflect any changes and applicant commitments developed during the Type B(DP) package design review process. The original FSAR must be updated to reflect any changes to requirements contained in the issued CoC.

(b) Each update must contain all the changes necessary to reflect information and analyses submitted to the Commission by the certificate holder or prepared by the certificate holder pursuant to Commission requirements since the submission of the original FSAR or, as appropriate, the last update to the FSAR under this section. The update must include the effects [3] of:

(1) All changes made in the dual-purpose spent fuel transportation package procedures as described in the FSAR;

(2) All safety analyses and evaluations performed by the certificate holder either in support of approved CoC amendments, or in support of conclusions that changes did not require a CoC amendment in accordance with § 71.175; and

(3) All analyses of new safety issues performed by or on behalf of the certificate holder at Commission request. The information shall be appropriately located within the updated FSAR.

(c)(1) The update of the FSAR must be filed in accordance with § 71.1, on a replacement-page basis;

(2) The update must include a list that identifies the current pages of the FSAR following page replacement;

(3) Each replacement page must include both a change indicator for the area changed, e.g., a bold line vertically drawn in the margin adjacent to the portion actually changed, and a page change identification (date of change or change number or both);

(4) The update must include:

(i) A certification by a duly authorized officer of the certificate holder that either the information accurately presents changes made since the previous submittal, or that no such changes were made; and

(ii) An identification of changes made by the certificate holder under the provisions of § 71.175, but not previously submitted to the Commission;

(5) The update must reflect all changes implemented up to a maximum of 6 months before the date of filing;

(6) Updates must be filed every 24 months from the date of issuance of the CoC;

(7) Updates must be filed within 90 days of issuance from the date of an amendment to the CoC; and

(8) The certificate holder shall provide a copy of the updated FSAR to each licensee who is using its Type B(DP) package design.

(d) The updated FSAR must be retained by the certificate holder until the Commission terminates the certificate.

(e) A certificate holder who permanently ceases operation shall provide the updated FSAR to the new certificate holder or to the Commission, in accordance with § 71.1, as appropriate.

18. Appendix A to Part 71 is revised to read as follows:

APPENDIX A TO PART 71—DETERMINATION OF A_1 AND A_2

I. Values of A_1 and A_2 for individual radionuclides, which are the bases for many activity limits elsewhere in this chapter, are given in Table A–1. The curie (Ci) values specified are obtained by converting from the Terabecquerel (TBq) figure. The curie values are expressed to three significant figures to assure that the difference in the TBq and Ci quantities is one tenth of one percent or less. Where values of A_1 and A_2 are unlimited, it is for radiation control purposes only. For nuclear criticality safety, some materials are subject to controls placed on fissile material.

II.(a) For individual radionuclides whose identities are known, but which are not listed in Table A–1, the A_1 and A_2 values contained in Table A–3 may be used. Otherwise, the licensee shall obtain prior Commission approval of the A_1 and A_2 values for radionuclides not listed in Table A–1, before shipping the material.

(b) For individual radionuclides whose identities are known, but which are not listed in Table A–2, the exempt material activity concentration and exempt consignment activity values contained in Table A–3 may be used. Otherwise, the licensee shall obtain prior Commission approval of the exempt material activity concentration and exempt consignment activity values, for radionuclides not listed in Table A–2, before shipping the material.

(c) The licensee shall submit requests for prior approval, described under paragraphs II(a) and II(b) of this Appendix, to the Commission, in accordance with § 71.1 of this part.

III. In the calculations of A_1 and A_2 for a radionuclide not in Table A–1, a single radioactive decay chain, in which radionuclides are present in their naturally occurring proportions, and in which no daughter radionuclide has a half-life either longer than 10 days, or longer than that of the parent radionuclide, shall be considered as a single radionuclide, and the activity to be taken into account, and the A_1 or A_2 value to be applied shall be those corresponding to

[3] Effects of changes include appropriate revisions of descriptions in the FSAR so that the FSAR (as updated) is complete and accurate.

the parent radionuclide of that chain. In the case of radioactive decay chains in which any daughter radionuclide has a half-life either longer than 10 days, or greater than that of the parent radionuclide, the parent and those daughter radionuclides shall be considered as mixtures of different radionuclides.

IV. For mixtures of radionuclides whose identities and respective activities are known, the following conditions apply:

(a) For special form radioactive material, the maximum quantity transported in a Type A package is as follows:

$$\sum_{I} \frac{B(i)}{A_1(i)} \leq 1$$

Where B(i) is the activity of radionuclide I, and $A_1(i)$ is the A_1 value for radionuclide I.

(b) For normal form radioactive material, the maximum quantity transported in a Type A package is as follows:

$$\sum_{I} \frac{B(i)}{A_2(i)} \leq 1$$

Where B(i) is the activity of radionuclide I, and $A_2(i)$ is the A_2 value for radionuclide I.

(c) Alternatively, the A_1 value for mixtures of special form material may be determined as follows:

$$A_1 \text{ for mixture} = \frac{1}{\sum_{I} \frac{f(i)}{A_1(i)}}$$

Where f(i) is the fraction of activity for radionuclide I in the mixture, and $A_1(i)$ is the appropriate A_1 value for radionuclide I.

(d) Alternatively, the A_2 value for mixtures of normal form material may be determined as follows:

$$A_2 \text{ for mixture} = \frac{1}{\sum_{I} \frac{f(i)}{A_2(i)}}$$

Where f(i) is the fraction of activity for radionuclide I in the mixture, and $A_2(i)$ is the appropriate A_2 value for radionuclide I.

(e) The exempt activity concentration for mixtures of nuclides may be determined as follows:

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum_{I} \frac{f(i)}{[A](i)}}$$

Where f(i) is the fraction of activity concentration of radionuclide I in the mixture, and [A] is the activity concentration for exempt material containing radionuclide I.

(f) The activity limit for an exempt consignment for mixtures of radionuclides may be determined as follows:

$$\text{Exempt consignment activity limit for mixture} = \frac{1}{\sum_{I} \frac{f(i)}{A(i)}}$$

Where f(i) is the fraction of activity of radionuclide I in the mixture, and A is the activity limit for exempt consignments for radionuclide I.

V. When the identity of each radionuclide is known, but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest A_1 or A_2 value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraph IV. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest A_1 or A_2 values for the alpha emitters and beta/gamma emitters.

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Ac-225 (a)	Actinium (89)	8.0×10^{-1}	2.2×10^{1}	6.0×10^{-3}	1.6×10^{-1}	2.1×10^{3}	5.8×10^{4}
Ac-227 (a)		9.0×10^{-1}	2.4×10^{1}	9.0×10^{-5}	2.4×10^{-3}	2.7	7.2×10^{1}
Ac-228		6.0×10^{-1}	1.6×10^{1}	5.0×10^{-1}	1.4×10^{1}	8.4×10^{4}	2.2×10^{6}
Ag-105	Silver (47)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	1.1×10^{3}	3.0×10^{4}
Ag-108m (a)		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	9.7×10^{-1}	2.6×10^{1}
Ag-110m (a)		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.8×10^{2}	4.7×10^{3}
Ag-111		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	5.8×10^{3}	1.6×10^{5}
Al-26	Aluminum (13)	1.0×10^{-1}	2.7	1.0×10^{-1}	2.7	7.0×10^{-4}	1.9×10^{2}
Am-241	Americium (95)	1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	1.3×10^{-1}	3.4
Am-242m (a)		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	3.6×10^{-1}	1.0×10^{1}
Am-243 (a)		5.0	1.4×10^{2}	1.0×10^{-3}	2.7×10^{-2}	7.4×10^{-3}	2.0×10^{-1}
Ar-37	Argon (18)	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	3.7×10^{3}	9.9×10^{4}
Ar-39		2.0×10^{1}	5.4×10^{2}	4.0×10^{1}	1.1×10^{3}	1.3	3.4×10^{1}
Ar-41		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.5×10^{6}	4.2×10^{7}
As-72	Arsenic (33)	3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	6.2×10^{4}	1.7×10^{6}
As-73		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	8.2×10^{2}	2.2×10^{4}
As-74		1.0	2.7×10^{1}	9.0×10^{-1}	2.4×10^{1}	3.7×10^{3}	9.9×10^{4}
As-76		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	5.8×10^{4}	1.6×10^{6}
As-77		2.0×10^{1}	5.4×10^{2}	7.0×10^{-1}	1.9×10^{1}	3.9×10^{4}	1.0×10^{6}
At-211 (a)	Astatine (85)	2.0×10^{1}	5.4×10^{2}	5.0×10^{-1}	1.4×10^{1}	7.6×10^{4}	2.1×10^{6}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Au-193	Gold (79)	7.0	1.9×10^{2}	2.0	5.4×10^{1}	3.4×10^{4}	9.2×10^{5}
Au-194		1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.5×10^{4}	4.1×10^{5}
Au-195	Gold (79)	1.0×10^{1}	2.7×10^{2}	6.0	1.6×10^{2}	1.4×10^{2}	3.7×10^{3}
Au-198		1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	9.0×10^{3}	2.4×10^{5}
Au-199		1.0×10^{1}	2.7×10^{2}	6.0×10^{-1}	1.6×10^{1}	7.7×10^{3}	2.1×10^{5}
Ba-131 (a)	Barium (56)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	3.1×10^{3}	8.4×10^{4}
Ba-133		3.0	8.1×10^{1}	3.0	8.1×10^{1}	9.4	2.6×10^{2}
Ba-133m		2.0×10^{1}	5.4×10^{2}	6.0×10^{-1}	1.6×10^{1}	2.2×10^{4}	6.1×10^{5}
Ba-140 (a)		5.0×10^{-1}	1.4×10^{1}	3.0×10^{-1}	8.1	2.7×10^{3}	7.3×10^{4}
Be-7	Beryllium (4)	2.0×10^{1}	5.4×10^{2}	2.0×10^{1}	5.4×10^{2}	1.3×10^{4}	3.5×10^{5}
Be-10		4.0×10^{1}	1.1×10^{3}	6.0×10^{-1}	1.6×10^{1}	8.3×10^{-4}	2.2×10^{2}
Bi-205	Bismuth (83)	7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	1.5×10^{-3}	4.2×10^{4}
Bi-206		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	3.8×10^{3}	1.0×10^{5}
Bi-207		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	1.9	5.2×10^{1}
Bi-210		1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	4.6×10^{3}	1.2×10^{5}
Bi-210m (a)		6.0×10^{-1}	1.6×10^{1}	2.0×10^{-2}	5.4×10^{-1}	2.1×10^{-5}	5.7×10^{-4}
Bi-212 (a)		7.0×10^{-1}	1.9×10^{1}	6.0×10^{-1}	1.6×10^{1}	5.4×10^{5}	1.5×10^{7}
Bk-247	Berkelium (97)	8.0	2.2×10^{2}	8.0×10^{-4}	2.2×10^{-2}	3.8×10^{-2}	1.0
Bk-249 (a)		4.0×10^{1}	1.1×10^{3}	3.0×10^{-1}	8.1	6.1×10^{1}	1.6×10^{3}
Br-76	Bromine (35)	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	9.4×10^{4}	2.5×10^{6}
Br-77		3.0	8.1×10^{1}	3.0	8.1×10^{1}	2.6×10^{4}	7.1×10^{5}
Br-82		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	4.0×10^{4}	1.1×10^{6}
C-11	Carbon (6)	1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.1×10^{7}	8.4×10^{8}
C-14		4.0×10^{1}	1.1×10^{3}	3.0	8.1×10^{1}	1.6×10^{-1}	4.5
Ca-41	Calcium (20)	[1]	[1]	[1]	[1]	3.1×10^{-3}	8.5×10^{-2}
Ca-45		4.0×10^{1}	1.1×10^{3}	1.0	2.7×10^{1}	6.6×10^{2}	1.8×10^{4}
Ca-47 (a)		3.0	8.1×10^{1}	3.0×10^{-1}	8.1	2.3×10^{4}	6.1×10^{5}
Cd-109	Cadmium 48	3.0×10^{1}	8.1×10^{2}	2.0	5.4×10^{1}	9.6×10^{1}	2.6×10^{3}
Cd-113m		4.0×10^{1}	1.1×10^{3}	5.0×10^{-1}	1.4×10^{1}	8.3	2.2×10^{2}
Cd-115 (a)		3.0	8.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.9×10^{4}	5.1×10^{5}
Cd-115m		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	9.4×10^{2}	2.5×10^{4}
Ce-139	Cerium (58)	7.0	1.9×10^{2}	2.0	5.4×10^{1}	2.5×10^{2}	6.8×10^{3}
Ce-141		2.0×10^{1}	5.4×10^{2}	6.0×10^{-1}	1.6×10^{1}	1.1×10^{3}	2.8×10^{4}
Ce-143		9.0×10^{-1}	2.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.5×10^{4}	6.6×10^{5}
Ce-144 (a)		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	1.2×10^{2}	3.2×10^{3}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Cf-248	Californium (98).	4.0×10^{1}	1.1×10^{3}	6.0×10^{-3}	1.6×10^{-1}	5.8×10^{1}	1.6×10^{3}
Cf-249		3.0	8.1×10^{1}	8.0×10^{-4}	2.2×10^{-2}	1.5×10^{-1}	4.1
Cf-250		2.0×10^{1}	5.4×10^{2}	2.0×10^{-3}	5.4×10^{-2}	4.0	1.1×10^{2}
Cf-251		7.0	1.9×10^{2}	7.0×10^{-4}	1.9×10^{-2}	5.9×10^{-2}	1.6
Cf-252 (h)		1.0×10^{-1}	2.7	1.0×10^{-3}	2.7×10^{-2}	2.0×10^{1}	5.4×10^{2}
Cf-253 (a)		4.0×10^{1}	1.1×10^{3}	4.0×10^{-2}	1.1	1.1×10^{3}	2.9×10^{4}
Cf-254		1.0×10^{-3}	2.7×10^{-2}	1.0×10^{-3}	2.7×10^{-2}	3.1×10^{2}	8.5×10^{3}
Cl-36	Chlorine (17)	1.0×10^{1}	2.7×10^{2}	6.0×10^{-1}	1.6×10^{1}	1.2×10^{-3}	3.3×10^{-2}
Cl-38		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	4.9×10^{6}	1.3×10^{8}
Cm-240	Curium (96)	4.0×10^{1}	1.1×10^{3}	2.0×10^{-2}	5.4×10^{-1}	7.5×10^{2}	2.0×10^{4}
Cm-241		2.0	5.4×10^{1}	1.0	2.7×10^{1}	6.1×10^{2}	1.7×10^{4}
Cm-242	Curium (96)	4.0×10^{1}	1.1×10^{3}	1.0×10^{-2}	2.7×10^{-1}	1.2×10^{2}	3.3×10^{3}
Cm-243		9.0	2.4×10^{2}	1.0×10^{-3}	2.7×10^{-2}	1.9×10^{-3}	5.2×10^{1}
Cm-244		2.0×10^{1}	5.4×10^{2}	2.0×10^{-3}	5.4×10^{-2}	3.0	8.1×10^{1}
Cm-245		9.0	2.4×10^{2}	9.0×10^{-4}	2.4×10^{-2}	6.4×10^{-3}	1.7×10^{-1}
Cm-246		9.0	2.4×10^{2}	9.0×10^{-4}	2.4×10^{-2}	1.1×10^{-2}	3.1×10^{-1}
Cm-247 (a)		3.0	8.1×10^{1}	1.0×10^{-3}	2.7×10^{-2}	3.4×10^{-6}	9.3×10^{-5}
Cm-248		2.0×10^{-2}	5.4×10^{-1}	3.0×10^{-4}	8.1×10^{-3}	1.6×10^{-5}	4.2×10^{-3}
Co-55	Cobalt (27)	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	1.1×10^{5}	3.1×10^{6}
Co-56		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.1×10^{3}	3.0×10^{4}
Co-57		1.0×10^{1}	2.7×10^{2}	1.0×10^{1}	2.7×10^{2}	3.1×10^{2}	8.4×10^{3}
Co-58		1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.2×10^{3}	3.2×10^{4}
Co-58m		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	2.2×10^{5}	5.9×10^{6}
Co-60		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	4.2×10^{1}	1.1×10^{3}
Cr-51	Chromium (24)	3.0×10^{1}	8.1×10^{2}	3.0×10^{1}	8.1×10^{2}	3.4×10^{3}	9.2×10^{4}
Cs-129	Cesium (55)	4.0	1.1×10^{2}	4.0	1.1×10^{2}	2.8×10^{4}	7.6×10^{5}
Cs-131		3.0×10^{1}	8.1×10^{2}	3.0×10^{1}	8.1×10^{2}	3.8×10^{3}	1.0×10^{5}
Cs-132		1.0	2.7×10^{1}	1.0	2.7×10^{1}	5.7×10^{3}	1.5×10^{5}
Cs-134		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	4.8×10^{1}	1.3×10^{3}
Cs-134m		4.0×10^{1}	1.1×10^{3}	6.0×10^{-1}	1.6×10^{1}	3.0×10^{5}	8.0×10^{6}
Cs-135		4.0×10^{1}	1.1×10^{3}	1.0	2.7×10^{1}	4.3×10^{-5}	1.2×10^{-3}
Cs-136		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	2.7×10^{3}	7.3×10^{4}
Cs-137 (a)		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.2	8.7×10^{1}
Cu64	Copper (29)	6.0	1.6×10^{2}	1.0	2.7×10^{1}	1.4×10^{5}	3.9×10^{6}
Cu-67		1.0×10^{1}	2.7×10^{2}	7.0×-10^{-1}	1.9×10^{1}	2.8×10^{4}	7.6×10^{5}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Dy-159	Dysprosium (66).	2.0×10^{1}	5.4×10^{2}	2.0×10^{1}	5.4×10^{2}	2.1×10^{2}	5.7×10^{3}
Dy-165		9.0×10^{-1}	2.4×10^{1}	6.0×10^{-1}	1.6×10^{-1}	3.0×10^{5}	8.2×10^{6}
Dy-166 (a)		9.0×10^{-1}	2.4×10^{1}	3.0×10^{-1}	8.1	8.6×10^{3}	2.3×10^{5}
Er-169	Erbium (68)	4.0×10^{1}	1.1×10^{3}	1.0	2.7×10^{1}	3.1×10^{3}	8.3×10^{4}
Er-171		8.0×10^{-1}	2.2×10^{1}	5.0×10^{-1}	1.4×10^{1}	9.0×10^{4}	2.4×10^{6}
Eu-147	Europium (63)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	1.4×10^{3}	3.7×10^{4}
Eu-148		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	6.0×10^{2}	1.6×10^{4}
Eu-149		2.0×10^{1}	5.4×10^{2}	2.0×10^{1}	5.4×10^{2}	3.5×10^{2}	9.4×10^{3}
Eu-150 (Short lived).		2.0	5.4×10^{1}	7.0×10^{-1}	1.9×10^{1}	6.1×10^{4}	1.6×10^{6}
Eu-150 (long lived).		2.0	5.4×10^{1}	7.0×10^{-1}	1.9×10^{1}	6.1×10^{4}	1.6×10^{6}
Eu-152		1.0	2.7×10^{1}	1.0	2.7×10^{1}	6.5	1.8×10^{2}
Eu-152m		8.0×10^{-1}	2.2×10^{1}	8.0×10^{-1}	2.2×10^{1}	8.2×10^{4}	2.2×10^{6}
Eu-154		$9.0\times^{-1}$	2.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	9.8	2.6×10^{2}
Eu-155		2.0×10^{1}	5.4×10^{2}	3.0	8.1×10^{1}	1.8×10^{1}	4.9×10^{2}
Eu-156		7.0×10^{-1}	1.9×10^{1}	$7.0\times^{-1}$	1.9×10^{1}	2.0×10^{3}	5.5×10^{4}
F-18	Fluorine (9)	1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.5×10^{6}	9.5×10^{7}
Fe-52 (a)	Iron (26)	3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	2.7×10^{5}	7.3×10^{6}
Fe-55		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	8.8×10^{1}	2.4×10^{3}
Fe-59		9.0×10^{-1}	2.4×10^{1}	$9.0\times^{-}$	2.4×10^{1}	1.8×10^{3}	5.0×10^{4}
Fe-60 (a)		4.0×10^{1}	1.1×10^{3}	2.0×10^{-1}	5.4	7.4×10^{-4}	2.0×10^{-2}
Ga-67	Gallium (31)	7.0	1.9×10^{2}	3.0	8.1×10^{1}	2.2×10^{4}	6.0×10^{5}
Ga-68		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	1.5×10^{6}	4.1×10^{7}
Ga-72		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.1×10^{5}	3.1×10^{6}
Gd-146	Gadolinium (64).	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	6.9×10^{2}	1.9×10^{4}
Gd-148		2.0×10^{1}	5.4×10^{2}	2.0×10^{-3}	5.4×10^{-2}	1.2	3.2×10^{1}
Gd-153		1.0×10^{1}	2.7×10^{2}	9.0	2.4×10^{2}	1.3×10^{2}	3.5×10^{3}
Gd-159		3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.9×10^{4}	1.1×10^{6}
Ge-68 (a)	Germanium (32).	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	2.6×10^{2}	7.1×10^{3}
Ge-71		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	5.8×10^{3}	1.6×10^{5}
Ge-77		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.3×10^{5}	3.6×10^{6}
Hf-172 (a)	Hafnium (72)	6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	4.1×10^{1}	1.1×10^{3}
Hf-175		3.0	8.1×10^{1}	3.0	8.1×10^{1}	3.9×10^{2}	1.1×10^{4}
Hf-181		2.0	5.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	6.3×10^{2}	1.7×10^{4}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Hf-182		(−1)	(−1)	(−1)	(−1)	8.1×10^{-6}	2.2×10^{-4}
Hg-194 (a)	Mercury (80)	1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.3×10^{-1}	3.5
Hg-195m (a)		3.0	8.1×10^{1}	7.0×10^{-1}	1.9×10^{1}	1.5×10^{4}	4.0×10^{5}
Hg-197		2.0×10^{1}	5.4×10^{2}	1.0×10^{1}	2.7×10^{2}	9.2×10^{3}	2.5×10^{5}
Hg-197m		1.0×10^{1}	2.7×10^{2}	4.0×10^{-1}	1.1×10^{1}	2.5×10^{4}	6.7×10^{5}
Hg-203		5.0	1.4×10^{2}	1.0	2.7×10^{1}	5.1×10^{2}	1.4×10^{4}
Ho-166	Holmium (67)	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	2.6×10^{4}	7.0×10^{5}
Ho-166m		6.0×10^{-1}	1.6×10^{1}	5.0×10^{-4}	1.4×10^{1}	6.6×10^{-2}	1.8
I-123	Iodine (53)	6.0	1.6×10^{2}	3.0	8.1×10^{1}	7.1×10^{4}	1.9×10^{6}
I-124		1.0	2.7×10^{1}	1.0	2.7×10^{1}	9.3×10^{3}	2.5×10^{5}
I-125		2.0×10^{1}	5.4×10^{2}	3.0	8.1×10^{1}	6.4×10^{2}	1.7×10^{4}
I-126		2.0	5.4×10^{1}	1.0	2.7×10^{1}	2.9×10^{3}	8.0×10^{4}
I-129		(1)	(1)	(1)	(1)	6.5×10^{-6}	1.8×10^{-4}
I-131		3.0	8.1×10^{1}	7.0×10^{-1}	1.9×10^{1}	4.6×10^{3}	1.2×10^{5}
I-132		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	3.8×10^{5}	1.0×10^{7}
I-133		7.0×10^{-1}	1.9×10^{1}	6.0×10^{-1}	1.6×10^{1}	4.2×10^{4}	1.1×10^{6}
I-134		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	9.9×10^{5}	2.7×10^{7}
I-135 (a)		6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.3×10^{5}	3.5×10^{6}
In-111	Indium (49)	3.0	8.1×10^{1}	3.0	8.1×10^{1}	1.5×10^{4}	4.2×10^{5}
In-113m		4.0	1.1×10^{2}	2.0	5.4×10^{1}	6.2×10^{5}	1.7×10^{7}
In-114m (a)		1.0×10^{1}	2.7×10^{2}	5.0×10^{-1}	1.4×10^{1}	8.6×10^{2}	2.3×10^{4}
In-115m		7.0	1.9×10^{2}	1.0	2.7×10^{1}	2.2×10^{5}	6.1×10^{6}
Ir-189 (a)	Iridium (77)	1.0×10^{1}	2.7×10^{2}	1.0×10^{1}	2.7×10^{2}	1.9×10^{3}	5.2×10^{4}
Ir-190		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	2.3×10^{3}	6.2×10^{4}
Ir-192		1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.4×10^{2}	9.2×10^{3}
Ir-194		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	3.1×10^{4}	8.4×10^{5}
K-40	Potassium (19)	9.0×10^{-1}	2.4×10^{1}	9.0×10^{-1}	2.4×10^{1}	2.4×10^{-7}	6.4×10^{-6}
K-42		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	2.2×10^{5}	6.0×10^{6}
K-43		7.0×10^{-1}	1.9×10^{1}	6.0×10^{1}	1.6×10^{1}	1.2×10^{5}	3.3×10^{6}
Kr-81	Krypton (36)	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	7.8×10^{-4}	2.1×10^{-2}
Kr-85		1.0×10^{1}	2.7×10^{2}	1.0×10^{1}	2.7×10^{2}	1.5×10^{1}	3.9×10^{2}
Kr-85m		8.0	2.2×10^{2}	3.0	8.1×10^{1}	3.0×10^{5}	8.2×10^{6}
Kr-87		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	1.0×10^{6}	2.8×10^{7}
La-137	Lanthanum (57).	3.0×10^{1}	8.1×10^{2}	6.0	1.6×10^{2}	1.6×10^{-3}	4.4×10^{-2}
La-140		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	2.1×10^{4}	5.6×10^{5}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Lu-172	Lutetium (71)	6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	4.2×10^{3}	1.1×10^{5}
Lu-173		8.0	2.2×10^{2}	8.0	2.2×10^{2}	5.6×10^{1}	1.5×10^{3}
Lu-174		9.0	2.4×10^{2}	9.0	2.4×10^{2}	2.3×10^{1}	6.2×10^{2}
Lu-174m		2.0×10^{1}	5.4×10^{2}	1.0×10^{1}	2.7×10^{2}	2.0×10^{2}	5.3×10^{3}
Lu-177		3.0×10^{1}	8.1×10^{2}	7.0×10^{-1}	1.9×10^{1}	4.1×10^{3}	1.1×10^{5}
Mg-28 (a)	Magnesium (12).	3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	2.0×10^{5}	5.4×10^{6}
Mn-52	Manganese (25).	3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.6×10^{4}	4.4×10^{5}
Mn-53		(1)	(1)	(1)	(1)	6.8×10^{-5}	1.8×10^{-3}
Mn-54		1.0	2.7×10^{1}	1.0	2.7×10^{1}	2.9×10^{2}	7.7×10^{3}
Mn-56		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	8.0×10^{5}	2.2×10^{7}
Mo-93	Molybdenum (42).	4.0×10^{1}	1.1×10^{3}	2.0×10^{1}	5.4×10^{2}	4.1×10^{-2}	1.1
Mo-99 (a) (h)		1.0	2.7×10^{1}	7.4×10^{-1}	2.0×10^{1}	1.8×10^{4}	4.8×10^{5}
N-13	Nitrogen (7)	9.0×10^{-1}	2.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	5.4×10^{7}	1.5×10^{9}
Na-22	Sodium (11)	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	2.3×10^{2}	6.3×10^{3}
Na-24		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	3.2×10^{5}	8.7×10^{6}
Nb-93m	Niobium (41)	4.0×10^{1}	1.1×10^{3}	3.0×10^{1}	8.1×10^{2}	8.8	2.4×10^{2}
Nb-94		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	6.9×10^{-3}	1.9×10^{-1}
Nb-95		1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.5×10^{3}	3.9×10^{4}
Nb-97		9.0×10^{-1}	2.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	9.9×10^{5}	2.7×10^{7}
Nd-147	Neodymium (60).	6.0	1.6×10^{2}	6.0×10^{-1}	1.6×10^{1}	3.0×10^{3}	8.1×10^{4}
Nd-149		6.0×10^{-1}	1.6×10^{1}	5.0×10^{-1}	1.4×10^{1}	4.5×10^{5}	1.2×10^{7}
Ni-59	Nickel (28)	1	1	1	1	3.0×10^{-3}	8.0×10^{-2}
Ni-63		4.0×10^{1}	1.1×10^{3}	3.0×10^{1}	8.1×10^{2}	2.1	5.7×10^{1}
Ni-65		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	7.1×10^{5}	1.9×10^{7}
Np-235	Neptunium (93)	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	5.2×10^{1}	1.4×10^{3}
Np-236 (short-lived).		2.0×10^{1}	5.4×10^{2}	2.0	5.4×10^{1}	4.7×10^{-4}	1.3×10^{-2}
Np-236 (long-lived).		2.0×10^{1}	5.4×10^{2}	2.0	5.4×10^{1}	4.7×10^{-4}	1.3×10^{-2}
Np-237		2.0×10^{1}	5.4×10^{2}	2.0×10^{-3}	5.4×10^{-2}	2.6×10^{-5}	7.1×10^{-4}
Np-239		7.0	1.9×10^{2}	4.0×10^{-1}	1.1×10^{1}	8.6×10^{3}	2.3×10^{5}
Os-185	Osmium (76)	1.0	2.7×10^{1}	1.0	2.7×10^{1}	2.8×10^{2}	7.5×10^{3}
Os-191		1.0×10^{1}	2.7×10^{2}	2.0	5.4×10^{1}	1.6×10^{3}	4.4×10^{4}
Os-191m		4.0×10^{1}	1.1×10^{3}	3.0×10^{1}	8.1×10^{2}	4.6×10^{4}	1.3×10^{6}
Os-193		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.0×10^{4}	5.3×10^{5}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Os-194 (a)		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.1×10^{1}	3.1×10^{2}
P-32	Phosphorus (15).	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	1.1×10^{4}	2.9×10^{5}
P-33		4.0×10^{1}	1.1×10^{3}	1.0	2.7×10^{1}	5.8×10^{3}	1.6×10^{5}
Pa-230 (a)	Protactinium (91).	2.0	5.4×10^{1}	7.0×10^{-2}	1.9	1.2×10^{3}	3.3×10^{4}
Pa-231		4.0	1.1×10^{2}	$4.0\times10-^{4}$	1.1×10^{-2}	1.7×10^{-3}	4.7×10^{-2}
Pa-233		5.0	1.4×10^{2}	7.0×10^{-1}	1.9×10^{1}	7.7×10^{2}	2.1×10^{4}
Pb-201	Lead (82)	1.0	2.7×10^{1}	1.0	2.7×10^{1}	6.2×10^{4}	1.7×10^{6}
Pb-202		4.0×10^{1}	1.1×10^{3}	2.0×10^{1}	5.4×10^{2}	1.2×10^{-4}	3.4×10^{-3}
Pb-203		4.0	1.1×10^{2}	3.0	8.1×10^{1}	1.1×10^{4}	3.0×10^{5}
Pb-205		[1]	[1]	[1]	[1]	4.5×10^{-6}	1.2×10^{-4}
Pb-210 (a)		1.0	2.7×10^{1}	5.0×10^{-2}	1.4	2.8	7.6×10^{1}
Pb-212 (a)		7.0×10^{-1}	1.9×10^{1}	2.0×10^{-1}	5.4	5.1×10^{4}	1.4×10^{6}
Pd-103 (a)	Palladium (46)	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	2.8×10^{3}	7.5×10^{4}
Pd-107		[1]	[1]	[1]	[1]	1.9×10^{-5}	5.1×10^{-4}
Pd-109		2.0	5.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	7.9×10^{4}	2.1×10^{6}
Pm-143	Promethium (61).	3.0	8.1×10^{1}	3.0	8.1×10^{1}	1.3×10^{2}	3.4×10^{3}
Pm-144		7.0×10^{-1}	1.9×10^{1}	7.0×10^{-1}	1.9×10^{1}	9.2×10^{1}	2.5×10^{3}
Pm-145		3.0×10^{1}	8.1×10^{2}	1.0×10^{1}	2.7×10^{2}	5.2	1.4×10^{2}
Pm-147		4.0×10^{1}	1.1×10^{3}	2.0	5.4×10^{1}	3.4×10^{1}	9.3×10^{2}
Pm-148m (a)		8.0×10^{-1}	2.2×10^{1}	7.0×10^{-1}	1.9×10^{1}	7.9×10^{2}	2.1×10^{4}
Pm-149		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.5×10^{4}	4.0×10^{5}
Pm-151		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.7×10^{4}	7.3×10^{5}
Po-210	Polonium (84)	4.0×10^{1}	1.1×10^{3}	2.0×10^{-2}	5.4×10^{-1}	1.7×10^{2}	4.5×10^{3}
Pr-142	Praseodymium (59).	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	4.3×10^{4}	1.2×10^{6}
Pr-143		3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.5×10^{3}	6.7×10^{4}
Pt-188 (a)	Platinum (78)	1.0	2.7×10^{1}	8.0×10^{-1}	2.2×10^{1}	2.5×10^{3}	6.8×10^{4}
Pt-191		4.0	1.1×10^{2}	3.0	8.1×10^{1}	8.7×10^{3}	2.4×10^{5}
Pt-193		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	1.4	3.7×10^{1}
Pt-193m		4.0×10^{1}	1.1×10^{3}	5.0×10^{-1}	1.4×10^{1}	5.8×10^{3}	1.6×10^{5}
Pt-195m		1.0×10^{1}	2.7×10^{2}	5.0×10^{-1}	1.4×10^{1}	6.2×10^{3}	1.7×10^{5}
Pt-197		2.0×10^{1}	5.4×10^{2}	6.0×10^{-1}	1.6×10^{1}	3.2×10^{4}	8.7×10^{5}
Pt-197m		1.0×10^{1}	2.7×10^{2}	6.0×10^{-1}	1.6×10^{1}	3.7×10^{5}	1.0×10^{7}
Pu-236	Plutonium (94)	3.0×10^{1}	8.1×10^{2}	3.0×10^{-3}	8.1×10^{-2}	2.0×10^{1}	5.3×10^{2}
Pu-237		2.0×10^{1}	5.4×10^{2}	2.0×10^{1}	5.4×10^{2}	4.5×10^{2}	1.2×10^{4}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Pu-238		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	6.3×10^{-1}	1.7×10^{1}
Pu-239		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-3}	2.3×10^{-3}	6.2×10^{-2}
Pu-240		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	8.4×10^{-3}	2.3×10^{-1}
Pu-241 (a)		4.0×10^{1}	1.1×10^{3}	6.0×10^{-2}	1.6	3.8	1.0×10^{2}
Pu-242		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	1.5×10^{-4}	3.9×10^{-3}
Pu-244 (a)		4.0×10^{-1}	1.1×10^{1}	1.0×10^{-3}	2.7×10^{-2}	6.7×10^{-7}	1.8×10^{-5}
Ra-223 (a)	Radium (88)	4.0×10^{-1}	1.1×10^{1}	7.0×10^{-3}	1.9×10^{-1}	1.9×10^{3}	5.1×10^{4}
Ra-224 (a)		4.0×10^{-1}	1.1×10^{1}	2.0×10^{-2}	5.4×10^{-1}	5.9×10^{3}	1.6×10^{5}
Ra-225 (a)		2.0×10^{-1}	5.4	4.0×10^{-3}	1.1×10^{1}	1.5×10^{3}	3.9×10^{4}
Ra-226 (a)		2.0×10^{-1}	5.4	3.0×10^{-3}	8.1×10^{-2}	3.7×10^{-2}	1.0
Ra-228 (a)		6.0×10^{-1}	1.6×10^{1}	2.0×10^{2}	5.4×10^{-1}	1.0×10^{1}	2.7×10^{2}
Rb-81	Rubidium (37)	2.0	5.4×10^{1}	8.0×10^{-1}	2.2×10^{1}	3.1×10^{5}	8.4×10^{6}
Rb-83 (a)		2.0	5.4×10^{1}	2.0	5.4×10^{1}	6.8×10^{2}	1.8×10^{4}
Rb-84		1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.8×10^{3}	4.7×10^{4}
Rb-86		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	3.0×10^{3}	8.1×10^{4}
Rb-87		(1)	(1)	(1)	(1)	3.2×10^{-9}	8.6×10^{-8}
Rb(nat)		(1)	(1)	(1)	(1)	6.7×10^{6}	1.8×10^{8}
Re-184	Rhenium (75)	1.0	2.7×10^{1}	1.0	2.7×10^{1}	6.9×10^{2}	1.9×10^{4}
Re-184m		3.0	8.1×10^{1}	1.0	2.7×10^{1}	1.6×10^{2}	4.3×10^{3}
Re-186		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	6.9×10^{3}	1.9×10^{5}
Re-187		(1)	(1)	(1)	(1)	1.4×10^{-9}	3.8×10^{-8}
Re-188		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	3.6×10^{4}	9.8×10^{5}
Re-189 (a)		3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.5×10^{4}	6.8×10^{5}
Rh-99	Rhodium (45)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	3.0×10^{3}	8.2×10^{4}
Re(nat)		(1)	(1)	(1)	(1)	0.0	2.4×10^{-8}
Rh-101		4.0	1.1×10^{2}	3.0	8.1×10^{1}	4.1×10^{1}	1.1×10^{3}
Rh-102		5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	4.5×10^{1}	1.2×10^{3}
Rh-102m		2.0	5.4×10^{1}	2.0	5.4×10^{1}	2.3×10^{2}	6.2×10^{3}
Rh-103m		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	1.2×10^{6}	3.3×10^{7}
Rh-105		1.0×10^{1}	2.7×10^{2}	8.0×10^{-1}	2.2×1^{1}	3.1×10^{4}	8.4×10^{5}
Rn-222 (a)	Radon (86)	3.0×10^{-1}	8.1	4.0×10^{-3}	1.1×10^{-1}	5.7×10^{3}	1.5×10^{5}
RU-97	Ruthenium (44)	5.0	1.4×10^{2}	5.0	1.4×10^{2}	1.7×10^{4}	4.6×10^{5}
RU-103 (a)		2.0	5.4×10^{1}	2.0	5.4×10^{1}	1.2×10^{3}	3.2×10^{4}
RU-105		1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.5×10^{5}	6.7×10^{6}
RU-106 (a)		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	1.2×10^{2}	3.3×10^{3}
S-35	Sulphur (16)	4.0×10^{1}	1.1×10^{3}	3.0	8.1×10^{1}	1.6×10^{3}	4.3×10^{4}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Sb-122	Antimony (51)	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.5×10^{4}	4.0×10^{5}
Sb-124		6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	6.5×10^{2}	1.7×10^{4}
Sb-125		2.0	5.4×10^{1}	1.0	2.7×10^{1}	3.9×10^{1}	1.0×10^{3}
Sb-126		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	3.1×10^{3}	8.4×10^{4}
Sc-44	Scandium (21)	5.0×10^{-1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	6.7×10^{5}	1.8×10^{7}
Sc-46		5.0×10^{1}	1.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	1.3×10^{3}	3.4×10^{4}
Sc-47		1.0×10^{1}	2.7×10^{2}	7.0×10^{-1}	1.9×10^{1}	3.1×10^{4}	8.3×10^{5}
Sc-48		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	5.5×10^{4}	1.5×10^{6}
Se-75	Selenium (34)	3.0	8.1×10^{1}	3.0	8.1×10^{1}	5.4×10^{2}	1.5×10^{4}
Se-79		4.0×10^{1}	1.1×10^{3}	2.0	5.4×10^{1}	2.6×10^{-3}	7.0×10^{-2}
Si-31	Silicon (14)	6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.4×10^{6}	3.9×10^{7}
Si-32		4.0×10^{1}	1.1×10^{3}	5.0×10^{-1}	1.4×10^{1}	3.9	1.1×10^{2}
Sm-145	Samarium (62)	1.0×10^{1}	2.7×10^{2}	1.0×10^{1}	2.7×10^{2}	9.8×10^{1}	2.6×10^{3}
Sm-147		(1)	(1)	(1)	(1)	8.5×10^{-1}	2.3×10^{-8}
Sm-151		4.0×10^{1}	1.1×10^{3}	1.0×10^{1}	2.7×10^{2}	9.7×10^{-1}	2.6×10^{1}
Sm-153		9.0	2.4×10^{2}	6.0×10^{-1}	1.6×10^{1}	1.6×10^{4}	4.4×10^{5}
Sn-113 (a)	Tin (50)	4.0	1.1×10^{2}	2.0	5.4×10^{1}	3.7×10^{2}	1.0×10^{4}
Sn-117m		7.0	1.9×10^{2}	4.0×10^{-1}	1.1×10^{1}	3.0×10^{3}	8.2×10^{4}
Sn-119m		4.0×10^{1}	1.1×10^{3}	3.0×10^{-1}	8.1×10^{2}	1.4×10^{2}	3.7×10^{3}
Sn-121m (a)		4.0×10^{1}	1.1×10^{3}	9.0×10^{-1}	2.4×10^{1}	2.0	5.4×10^{1}
Sn-123		8.0×10^{-1}	2.2×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.0×10^{2}	8.2×10^{3}
Sn-125		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	4.0×10^{3}	1.1×10^{5}
Sn-126 (a)		6.0×10^{-1}	1.6×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.0×10^{3}	2.8×10^{-2}
Sr-82 (a)	Strontium (38)	2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	2.3×10^{3}	6.2×10^{4}
Sr-85		2.0	5.4×10^{1}	2.0	5.4×10^{1}	8.8×10^{2}	2.4×10^{4}
Sr-85m		5.0	1.4×10^{2}	5.0	1.4×10^{2}	1.2×10^{6}	3.3×10^{7}
Sr-87m		3.0	8.1×10^{1}	3.0	8.1×10^{1}	4.8×10^{5}	1.3×10^{7}
Sr-89		6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.1×10^{3}	2.9×10^{4}
Sr-90 (a)		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	5.1	1.4×10^{2}
Sr-91 (a)		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.3×10^{5}	3.6×10^{6}
Sr-92 (a)		1.0	2.7×10^{1}	3.0×10^{-1}	8.1	4.7×10^{5}	1.3×10^{7}
T(H-3)	Tritium (1)	4.0×10^{1}	1.1×10^{3}	4.0×10^{-1}	1.1×10^{3}	3.6×10^{2}	9.7×10^{3}
Ta-178 (long-lived).	Tantalum (73)	1.0	2.7×10^{1}	8.0×10^{-1}	2.2×10^{1}	4.2×10^{6}	1.1×10^{8}
Ta-179		3.0×10^{-1}	8.1×10^{2}	3.0×10^{1}	8.1×10^{2}	4.1×10^{1}	1.1×10^{3}
Ta-182		9.0×10^{-1}	2.4×10^{1}	5.0×10^{-1}	1.4×10^{1}	2.3×10^{2}	6.2×10^{3}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Tb-157	Terbium (65)	4.0×10^{-1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	5.6×10^{1}	1.5×10^{1}
Tb-158		1.0	2.7×10^{1}	1.0	2.7×10^{-1}	5.6×10^{1}	1.5×10^{1}
Tb-160		1.0	2.7×10^{-1}	6.0×10^{-1}	1.6×10^{1}	4.2×10^{2}	1.1×10^{4}
Tc-95m (a)	Technetium (43).	2.0	5.4×10^{1}	2.0	5.4×10^{1}	8.3×10^{2}	2.2×10^{4}
Tc-96		4.0×10^{1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.2×10^{4}	3.2×10^{5}
Tc-96m (a)		4.0×10^{1}	1.1×10^{1}	4.0×10^{1}	1.1×10^{1}	1.4×10^{6}	3.8×10^{7}
Tc-97		(1)	(1)	(1)	(1)	5.2×10^{5}	1.4×10^{3}
Tc-97m		4.0×10^{1}	1.1×10^{3}	1.0	2.7×10^{1}	5.6×10^{2}	1.5×10^{4}
Tc-98		8.0×10^{-1}	2.2×10^{1}	7.0×10^{-1}	1.9×10^{1}	3.2×10^{-5}	8.7×10^{-4}
Tc-99		4.0×10^{1}	1.1×10^{3}	9.0×10^{-1}	2.4×10^{1}	6.3×10^{-4}	1.7×10^{-2}
Tc-99m		1.0×10^{1}	2.7×10^{2}	4.0	1.1×10^{2}	1.9×10^{5}	5.3×10^{6}
Te-121	Tellurium (52)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	2.4×10^{3}	6.4×10^{4}
Te-121m		5.0	1.4×10^{2}	3.0	8.1×10^{1}	2.6×10^{2}	7.0×10^{3}
Te-123m		8.0	2.2×10^{2}	1.0	2.7×10^{1}	3.3×10^{2}	8.9×10^{3}
Te-125m		2.0×10^{1}	5.4×10^{2}	9.0×10^{-1}	2.4×10^{-1}	6.7×10^{2}	1.8×10^{4}
Te-127		2.0×10^{1}	5.4×10^{2}	7.0×10^{-1}	1.9×10^{1}	9.8×10^{4}	2.6×10^{6}
Te-127m (a)		2.0×10^{1}	5.4×10^{2}	5.0×10^{-1}	1.4×10^{1}	3.5×10^{2}	9.4×10^{3}
Te-129		7.0×10^{1}	1.9×10^{1}	6.0×10^{1}	1.6×10^{1}	7.7×10^{5}	2.1×10^{7}
Te-129m (a)		8.0×10^{-1}	2.2×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.1×10^{3}	3.0×10^{4}
Te-131m (a)		7.0×10^{-1}	1.9×10^{1}	5.0×10^{-1}	1.4×10^{1}	3.0×10^{4}	8.0×10^{5}
Te-132 (a)		5.0×10^{1}	1.4×10^{1}	4.0×10^{-1}	1.1×10^{1}	1.1×10^{4}	8.0×10^{5}
Th-227	Thorium (90)	1.0×10^{1}	2.7×10^{2}	5.0×10^{-3}	1.4×10^{1}	1.1×10^{3}	3.1×10^{4}
Th-228 (a)		5.0×10^{-1}	1.4×10^{1}	1.0×10^{-3}	2.7×10^{-2}	3.0×10^{1}	8.2×10^{2}
Th-229		5.0	1.4×10^{2}	5.0×10^{-4}	1.4×10^{-2}	7.9×10^{-3}	2.1×10^{-1}
Th-230		1.0×10^{1}	2.7×10^{2}	1.0×10^{-3}	2.7×10^{-2}	7.6×10^{-4}	2.1×10^{-2}
Th-231	Thorium (90)	4.0×10^{1}	1.1×10^{3}	2.0×10^{2}	5.4×10^{-1}	2.0×10^{4}	5.3×10^{5}
Th-232		(1)	(1)	(1)	(1)	4.0×10^{-9}	1.1×10^{-7}
Th-234 (a)		3.0×10^{1}	8.1	3.0×10^{-1}	8.1	8.6×10^{2}	2.3×10^{4}
Th(nat)		(1)	(1)	(1)	(1)	8.1×10^{-9}	2.2×10^{-7}
Ti-44 (a)	Titanium (22)	5.0×10^{1}	1.4×10^{1}	4.0×10^{1}	1.1×10^{-1}	6.4	1.7×10^{2}
Tl-200	Thallium (81)	9.0×10^{1}	2.4×10^{1}	9.0×10^{-1}	2.4×10^{1}	2.2×10^{4}	6.0×10^{5}
Tl-201		1.0×10^{1}	2.7×10^{2}	4.0	1.1×10^{2}	7.9×10^{3}	2.1×10^{5}
Tl-202		2.0	5.4×10^{1}	2.0	5.4×10^{1}	2.0×10^{3}	5.3×10^{4}
Tl-204		1.0×10^{1}	2.7×10^{2}	7.0×10^{1}	1.9×10^{1}	1.7×10^{1}	4.6×10^{2}
Tm-167	Thulium (69)	7.0	1.9×10^{2}	8.0×10^{-1}	2.2×10^{1}	3.1×10^{3}	8.5×10^{4}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Tm-170		3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.2×10^{2}	6.0×10^{3}
Tm-171		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}
U-230 (fast lung absorption) (a)(d).	Uranium (92)	4.0×10^{1}	1.1×10^{3}	1.0×10^{-1}	2.7	1.0×10^{3}	2.7×10^{4}
U-230 (medium lung absorption) (a)(e).		4.0×10^{1}	1.1×10^{3}	1.0×10^{-1}	2.7	1.0×10^{3}	2.7×10^{4}
U-230 (slow lung absorption) (a)(f).		4.0×10^{1}	1.1×10^{3}	1.0×10^{-1}	2.7	1.0×10^{3}	2.7×10^{4}
U-232 (fast lung absorption) (d).		4.0×10^{1}	1.1×10^{3}	1.0×10^{-2}	2.7×10^{-1}	8.3×10^{-1}	2.2×10^{1}
U-232 (medium lung absorption) (e).		4.0×10^{1}	1.1×10^{3}	1.0×10^{-2}	2.7×10^{-1}	8.3×10^{-1}	2.2×10^{1}
U-233 (fast lung absorption) (d).	Uranium (92)	4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	3.6×10^{-4}	9.7×10^{-3}
U-233 (medium lung absorption) (e).		4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	3.6×10^{-4}	9.7×10^{-3}
U-233 (slow lung absorption) (f).		4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	3.6×10^{-4}	9.7×10^{-3}
U-234 (fast lung absorption) (d).		4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	2.3×10^{-4}	6.2×10^{-3}
U-234 (medium lung absorption) (e).		4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	2.3×10^{-4}	6.2×10^{-3}
U-234 (slow lung absorption) (f).		4.0×10^{1}	1.1×10^{3}	9.0×10^{-2}	2.4	2.3×10^{-4}	6.2×10^{-3}
U-235 (all lung absorption types) (a),(d),(e),(f).		(1)	(1)	(1)	(1)	8.0×10^{-8}	2.2×10^{-6}
U-236 (fast lung absorption) (d).		(1)	(1)	(1)	(1)	2.4×10^{-6}	6.5×10^{-5}
U-236 (medium lung absorption) (e).		(1)	(1)	(1)	(1)	2.4×10^{-6}	6.5×10^{-5}
U-236 (slow lung absorption) (f).		(1)	(1)	(1)	(1)	2.4×10^{-6}	6.5×10^{-5}
U-238 (all lung absorption types) (d),(e),(f).		(1)	(1)	1	(1)	1.2×10^{-8}	3.4×10^{-7}

TABLE A–1.—A_1 AND A_2 VALUES FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
U (nat)		[1]	[1]	[1]	([1])	2.6×10^{-8}	7.1×10^{-7}
U (enriched to 20% or less)(g).		[1]	[1]	[1]	[1]	N/A	N/A
U (dep)		[1]	[1]	[1]	[1]	0.0	([2])
V-48	Vanadium (23)	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	6.3×10^{3}	1.7×10^{5}
V-49		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	3.0×10^{2}	8.1×10^{3}
W-178 (a)	Tungsten (74)	9.0	2.4×10^{2}	5.0	1.4×10^{2}	1.3×10^{3}	3.4×10^{4}
W-181		3.0×10^{1}	8.1×10^{2}	3.0×10^{1}	8.1×10^{2}	2.2×10^{2}	6.0×10^{3}
W-185		4.0×10^{1}	1.1×10^{3}	8.0×10^{-1}	2.2×10^{1}	3.5×10^{2}	9.4×10^{3}
W-187		2.0	5.4×10^{1}	6.0×10^{-1}	1.6×10^{1}	2.6×10^{4}	7.0×10^{5}
W-188 (a)		4.0×10^{-1}	1.1×10^{1}	3.0×10^{-1}	8.1	3.7×10^{2}	1.0×10^{4}
×e-122 (a)	×enon (54)	4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	4.8×10^{4}	1.3×10^{6}
×e-123		2.0	5.4×10^{1}	7.0×10^{-1}	1.9×10^{1}	4.4×10^{5}	1.2×10^{7}
×e-127		4.0	1.1×10^{2}	2.0	5.4×10^{1}	1.0×10^{3}	2.8×10^{4}
×e-131m		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	3.1×10^{3}	8.4×10^{4}
×e-133		2.0×10^{1}	5.4×10^{2}	1.0×10^{1}	2.7×10^{2}	6.9×10^{3}	1.9×10^{5}
×e-135		3.0	8.1×10^{1}	2.0	5.4×10^{1}	9.5×10^{4}	2.6×10^{6}
Y-87 (a)	Yttrium (39)	1.0	2.7×10^{1}	1.0	2.7×10^{1}	1.7×10^{4}	4.5×10^{5}
Y-88		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	5.2×10^{2}	1.4×10^{4}
Y-90		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	2.0×10^{4}	5.4×10^{5}
Y-91		6.0×10^{-1}	1.6×10^{1}	6.0×10^{-1}	1.6×10^{1}	9.1×10^{2}	2.5×10^{4}
Y-91m		2.0	5.4×10^{1}	2.0	5.4×10^{1}	1.5×10^{6}	4.2×10^{7}
Y-92		2.0×10^{-1}	5.4	2.0×10^{-1}	5.4	3.6×10^{5}	9.6×10^{6}
Y-93		3.0×10^{-1}	8.1	3.0×10^{-1}	8.1	1.2×10^{5}	3.3×10^{6}
Yb-169	Ytterbium (79)	4.0	1.1×10^{2}	1.0	2.7×10^{1}	8.9×10^{2}	2.4×10^{4}
Yb-175		3.0×10^{1}	8.1×10^{2}	9.0×10^{-1}	2.4×10^{1}	6.6×10^{3}	1.8×10^{5}
Zn-65	Zinc (30)	2.0	5.4×10^{1}	2.0	5.4×10^{1}	3.0×10^{2}	8.2×10^{3}
Zn-69		3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.8×10^{6}	4.9×10^{7}
Zn-69m (a)		3.0	8.1×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.2×10^{5}	3.3×10^{6}
Zr-88	Zirconium (40)	3.0	8.1×10^{1}	3.0	8.1×10^{1}	6.6×10^{2}	1.8×10^{4}
Zr-93		[1]	[1]	[1]	[1]	9.3×10^{-5}	2.5×10^{-3}
Zr-95 (a)		2.0	5.4×10^{1}	8.0×10^{-1}	2.2×10^{1}	7.9×10^{2}	2.1×10^{4}
Zr-97 (a)		4.0×10^{-1}	1.1×10^{1}	4.0×10^{-1}	1.1×10^{1}	7.1×10^{4}	1.9×10^{6}

[1] Unlimited.
[2] (See Table A–3.)
(a) A_1 and/or A_2 values include contributions from daughter nuclides with half-lives less than 10 days.
(b) Parent nuclides and their progeny included in secular equilibrium are listed in the following:
Sr-90 Y-90
Zr-93 Nb-93m
Zr-97 Nb-97

Ru-106 Rh-106
Cs-137 Ba-137m
Ce-134 La-134
Ce-144 Pr-144
Ba-140 La-140
Bi-212 Tl-208 (0.36), Po-212 (0.64)
Pb-210 Bi-210, Po-210
Pb-212 Bi-212, Tl-208 (0.36), Po-212 (0.64)
Rn-220 Po-216
Rn-222 Po-218, Pb-214, Bi-214, Po-214
Ra-223 Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224 Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Ra-226 Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Ra-228 Ac-228
Th-226 Ra-222, Rn-218, Po-214
Th-228 Ra-224, Rn-220, Po-216, Pb212, Bi-212, Tl208 (0.36), Po-212 (0.64)
Th-229 Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-209
Th-nat Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-234 Pa-234m
U-230 Th-226, Ra-222, Rn-218, Po-214
U-232 Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
U-235 Th-231
U-238 Th-234, Pa-234m
U-nat Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214,
U-240 Np-240m
Np-237 Pa-233
Am-242m Am-242
Am-243 Np-239

(c) The quantity may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.

(d) These values apply only to compounds of uranium that take the chemical form of UF_6, UO_2F_2 and $UO_2(NO_3)_2$ in both normal and accident conditions of transport.

(e) These values apply only to compounds of uranium that take the chemical form of UO_3, UF_4, UCl_4 and he×avalent compounds in both normal and accident conditions of transport.

(f) These values apply to all compounds of uranium other than those specified in (d) and (e) above.

(g) These values apply to unirradiated uranium only.

(h) These values apply to domestic transport only. For international transport use the values in the table below.

TABLE A–1.—(SUPPLEMENT) A_1 AND A_2 VALUES FOR RADIONUCLIDES FOR INTERNATIONAL SHIPMENTS

Symbol of radionuclide	Element and atomic number	A_1 (TBq)	A_1 (Ci)	A_2 (TBq)	A_2 (Ci)	Specific activity (TBq/g)	Specific activity (Ci/g)
Cf-252	Californium (98)	5.0×10^{-2}	1.4	3.0×10^{-3}	8.1×10^{-2}	2.0×10^{-1}	5.4×10^{2}
Mo-99 (a)	Molybdenum (42)	1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.8×10^{4}	4.8×10^{5}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ac-225(a)	Actinium (89)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Ac-227(a)		1.0×10^{-1}	2.7×10^{-12}	1.0×10^{3}	2.7×10^{-8}
Ac-228		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ag-105	Silver (47)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ag-108m(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ag-110m (a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ag-111		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Al-26	Aluminum (13)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Am-241	Americium (95)	1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Am-242m(a)		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Am-243(a)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Ar-37	Argon (18)	1.0×10^{6}	2.7×10^{-5}	1.0×10^{8}	2.7×10^{-3}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ar-39		1.0×10^{7}	2.7×10^{-4}	1.0×10^{4}	2.7×10^{-7}
Ar-41		1.0×10^{2}	2.7×10^{-9}	1.0×10^{9}	2.7×10^{-2}
As-72	Arsenic (33)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
As-73		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
As-74		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
As-76		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
As-77		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
At-211(a)	Astatine (85)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Au-193	Gold (79)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Au-194		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Au-195		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Au-198		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Au-199		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ba-131(a)	Barium (56)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ba-133		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ba-133m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ba-140(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Be-7	Beryllium (4)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Be-10		1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Bi-205	Bismuth (83)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Bi-206		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Bi-207		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Bi-210		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Bi-210m(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Bi-212(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Bk-247	Berkelium (97)	1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Bk-249(a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Br-76	Bromine (35)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Br-77		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Br-82		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
C-11	Carbon (6)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
C-14		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Ca-41	Calcium (20)	1.0×10^{5}	2.7×10^{-6}	1.0×10^{7}	2.7×10^{-4}
Ca-45		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Ca-47(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Cd-109	Cadmium (48)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Cd-113m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Cd-115(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Cd-115m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Ce-139	Cerium (58)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ce-141		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Ce-143		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ce-144 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Cf-248	Californium (98)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cf-249		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Cf-250		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cf-251		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Cf-252		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cf-253(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Cf-254		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Cl-36	Chlorine (17)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Cl-38		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Cm-240	Curium (96)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Cm-241		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Cm-242		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Cm-243		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Cm-244		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cm-245		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Cm-246		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Cm-247(a)		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Cm-248		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Co-55	Cobalt (27)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Co-56		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Co-57		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Co-58		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Co-58m		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Co-60		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Cr-51	Chromium (24)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Cs-129	Cesium (55)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Cs-131		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Cs-132		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Cs-134		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cs-134m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Cs-135		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Cs-136		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Cs-137(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Cu-64	Copper (29)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Cu-67		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Dy-159	Dysprosium (66)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Dy-165		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Dy-166(a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Er-169	Erbium (68)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Er-171		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Eu-147	Europium (63)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Eu-148		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Eu-149		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Eu-150 (short lived)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Eu-150 (long lived)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Eu-152		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Eu-152m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Eu-154		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Eu-155		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Eu-156		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
F-18	Fluorine (9)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Fe-52(a)	Iron (26)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Fe-55		1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Fe-59		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Fe-60(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Ga-67	Gallium (31)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ga-68		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Ga-72		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Gd-146(a)	Gadolinium (64)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Gd-148		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Gd-153		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Gd-159		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Ge-68(a)	Germanium (32)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Ge-71		1.0×10^{4}	2.7×10^{-7}	1.0×10^{8}	2.7×10^{-3}
Ge-77		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Hf-172(a)	Hafnium (72)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Hf-175		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Hf-181		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Hf-182		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Hg-194(a)	Mercury (80)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Hg-195m (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{5}
Hg-197		1.0×10^{2}	2.7×10^{-9}	$1.0\times^{7}$	2.7×10^{4}
Hg-197m		1.0×10^{2}	2.7×10^{9}	1.0×10^{6}	2.7×10^{-5}
Hg-203		1.0×10^{2}	2.7×10^{9}	1.0×10^{5}	2.7×10^{-6}
Ho-166	Holmium (67)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Ho-166m		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
I-123	Iodine (53)	1.0×102	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
I-124		1.0×10^{1}	$2.7\times10-10$	1.0×10^{6}	2.7×10^{-5}
I-125		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
I-126		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	12.7×10^{-5}
I-129		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
I-131		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
I-132		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
I-133		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
I-134		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
1I-135(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
In-111	Indium (49)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
In-113m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
In-114m(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
In-115m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ir-189(a)	Iridium (77)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Ir-190		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ir-192		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Ir-194		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
K-40	Potassium (19)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
K-42		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
K-43		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Kr-81	Krypton (36)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Kr-85		1.0×10^{5}	2.7×10^{-6}	1.0×10^{4}	2.7×10^{-7}
Kr-85m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{10}	2.7×10^{-1}
Kr-87		1.0×10^{2}	2.7×10^{-9}	1.0×10^{9}	2.7×10^{-2}
La-137	Lanthanum (57)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
La-140		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Lu-172	Lutetium (71)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Lu-173		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Lu-174		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Lu-174m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Lu-177		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Mg-28(a)	Magnesium (12)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Mn-52	Manganese (25)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Mn-53		1.0×10^{4}	2.7×10^{-7}	1.0×10^{9}	2.7×10^{-2}
Mn-54		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Mn-56		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Mo-93	Molybdenum (42)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{8}	2.7×10^{-3}
Mo-99(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
N-13	Nitrogen (7)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{9}	2.7×10^{-2}
Na-22	Sodium (11)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Na-24		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Nb-93m	Niobium (41)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Nb-94		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Nb-95		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Nb-97		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Nd-147	Neodymium (60)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Nd-149		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ni-59	Nickel (28)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{8}	2.7×10^{-3}
Ni-63		1.0×10^{5}	2.7×10^{-6}	1.0×10^{8}	2.7×10^{-3}
Ni-65		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Np-235	Neptunium (93)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Np-236 (short-lived)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Np-236 (long-lived)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Np-237		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Np-239		1.0×10^{2}	2.7×10^{-9}	1.0×10^{2}	2.7×10^{-4}
Os-185	Osmium (76)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Os-191		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Os-191m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Os-193		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Os-194 (a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
P-32	Phosphorus (15)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
P-33		1.0×10^{5}	2.7×10^{-6}	1.0×10^{8}	2.7×10^{-3}
Pa-230(a)	Protactinium (91)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Pa-231		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Pa-233		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Pb-201	Lead (82)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Pb-202		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Pb-203		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Pb-205		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Pb-210(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Pb-212(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Pd-103(a)	Palladium (46)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{8}	2.7×10^{-3}
Pd-107		1.0×10^{5}	2.7×10^{-6}	1.0×10^{8}	2.7×10^{-3}
Pd-109		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Pm-143	Promethium (61)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Pm-144		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Pm-145		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Pm-147		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Pm-148m(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Pm-149		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Pm-151		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Po-210	Polonium (84)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Pr-142	Praseodymium (59)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Pr-143		1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Pt-188(a)	Platinum (78)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Pt-191		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Pt-193		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Pt-193m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Pt-195m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Pt-197		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Pt-197m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Pu-236	Plutonium (94)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Pu-237		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Pu-238		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Pu-239		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Pu-240		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Pu-241(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Pu-242		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Pu-244(a)		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Ra-223(a)	Radium (88)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Ra-224(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Ra-225(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Ra-226(a)		1.0×10^{1}	2.7×10^{-6}	1.0×10^{4}	2.7×10^{-7}
Ra-228(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Rb-81	Rubidium (37)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Rb-83(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Rb-84		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Rb-86		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Rb-87		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Rb(nat)		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Re-184	Rhenium (75)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Re-184m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Re-186		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Re-187		1.0×10^{6}	2.7×10^{-5}	1.0×10^{9}	2.7×10^{-2}
Re-188		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Re-189(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Re(nat)		1.0×10^{6}	2.7×10^{-5}	1.0×10^{9}	2.7×10^{-2}
Rh-99	Rhodium (45)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Rh-101		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Rh-102		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Rh-102m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Rh-103m		1.0×10^{4}	2.7×10^{-7}	1.0×10^{8}	2.7×10^{-3}
Rh-105		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Rn-222(a)	Radon (86)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{8}	2.7×10^{-3}
Ru-97	Ruthenium (44)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Ru-103(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Ru-105		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ru-106(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
S-35	Sulphur (16)	1.0×10^{5}	2.7×10^{-6}	1.0×10^{8}	2.7×10^{-3}
Sb-122	Antimony (51)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{4}	2.7×10^{-7}
Sb-124		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Sb-125		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sb-126		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Sc-44	Scandium (21)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Sc-46		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Sc-47		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sc-48		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Se-75	Selenium (34)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Se-79		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Si-31	Silicon (14)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Si-32		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Sm-145	Samarium (62)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Sm-147		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Sm-151		1.0×10^{4}	2.7×10^{-7}	1.0×10^{8}	2.7×10^{-3}
Sm-153		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sn-113(a)	Tin (50)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Sn-117m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sn-119m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Sn-121m(a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Sn-123		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Sn-125		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Sn-126(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Sr-82(a)	Strontium (38)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Sr-85		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sr-85m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Sr-87m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Sr-89		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Sr-90(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{4}	2.7×10^{-7}
Sr-91(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Sr-92(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
T(H–3)	Tritium (1)	1.0×10^{6}	2.7×10^{-5}	1.0×10^{9}	2.7×10^{-2}
Ta-178 (long-lived)	Tantalum (73)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Ta-179		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Ta-182		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Tb-157	Terbium (65)	1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Tb-158		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tb-160		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tc-95m(a)	Technetium (43)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tc-96		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tc-96m(a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Tc-97		1.0×10^{3}	2.7×10^{-8}	1.0×10^{8}	2.7×10^{-3}
Tc-97m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Tc-98		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tc-99		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
Tc-99m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Te-121	Tellurium (52)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Te-121m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Te-123m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Te-125m		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Te-127		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Te-127m(a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Te-129		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Te-129m(a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Te-131m(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Te-132(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Th-227	Thorium (90)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Th-228(a)		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
Th-229		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Th-230		1.0	2.7×10^{-11}	1.0×10^{4}	2.7×10^{-7}
Th-231		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Th-232		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
Th-234(a)		1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Th(nat)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
Ti-44(a)	Titanium (22)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
Tl-200	Thallium (81)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Tl-201		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Tl-202		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Tl-204		1.0×10^{4}	2.7×10^{-7}	1.0×10^{4}	2.7×10^{-7}
Tm-167	Thulium (69)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Tm-170		1.0×10^{3}	2.7×10^{-8}	1.0×10^{6}	2.7×10^{-5}
Tm-171		1.0×10^{4}	2.7×10^{-7}	1.0×10^{8}	2.7×10^{-3}
U-230 (fast lung absorption) (a)(d)	Uranium (92)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
U-230 (medium lung absorption) (a)(e)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
U-230 (slow lung absorption) (a)(f)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
U-232 (fast lung absorption) (d)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
U-232 (medium lung absorption) (e)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
U-232 (slow lung absorption) (f)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
U-233 (fast lung absorption) (d)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-233 (medium lung absorption) (e)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-233 (slow lung absorption) (f)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-234 (fast lung absorption) (d)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-234 (medium lung absorption) (e)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-234 (slow lung absorpiton (f)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-235 (all lung absorption types) (a), (d), (e), (f).		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-236 (fast lung absorption) (d)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-236 (medium lung absorption (e)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-236 (slow lung absorption) (f)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U-238 (all lung absorption types) (d), (e), (f).		1.0×10^{1}	2.7×10^{-10}	1.0×10^{4}	2.7×10^{-7}
U(nat)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
U (enriched to 20% or less) (g)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}
U(dep)		1.0	2.7×10^{-11}	1.0×10^{3}	2.7×10^{-8}

TABLE A–2.—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES—Continued

Symbol of radionuclide	Element and atomic number	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
V–48	Vanadium (23)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}
V–49		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
W–178(a)	Tungsten (74)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
W–181		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
W–185		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
W–187		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
W–188(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Xe-122(a)	Xenon (54)	$1.0X10^{2}$	$2.7X10^{-9}$	$1.0X10^{9}$	$2.7X10^{-2}$
Xe-123		1.0×10^{2}	2.7×10^{-9}	1.0×10^{9}	2.7×10^{-2}
Xe-127		1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Xe-131m		1.0×10^{4}	2.7×10^{-7}	1.0×10^{4}	2.7×10^{-7}
Xe-133		1.0×10^{3}	2.7×10^{-8}	1.0×10^{4}	2.7×10^{-7}
Xe-135		1.0×10^{3}	2.7×10^{-8}	1.0×10^{10}	2.7×10^{-1}
Y-87(a)	Yttrium (39)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Y-88		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Y-90		1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Y-91		1.0×10^{3}	$2.7\times10-^{8}$	1.0×10^{6}	2.7×10^{-5}
Y-91m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Y-92		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Y-93		1.0×10^{2}	2.7×10^{-9}	1.0×10^{5}	2.7×10^{-6}
Yb-169	Ytterbium (79)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{7}	2.7×10^{-4}
Yb-175		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Zn-65	Zinc (30)	1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Zn-69		1.0×10^{4}	2.7×10^{-7}	1.0×10^{6}	2.7×10^{-5}
Zn-69m(a)		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Zr-88	Zirconium (40)	1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
Zr-93		1.0×10^{3}	2.7×10^{-8}	1.0×10^{7}	2.7×10^{-4}
Zr-95(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{6}	2.7×10^{-5}
Zr-97(a)		1.0×10^{1}	2.7×10^{-10}	1.0×10^{5}	2.7×10^{-6}

NOTES

(a) A_1 and/or A_2 values include contributions from daughter nuclides w/half-lives less than 10 days.

(b) Parent nuclides and their progeny included in secular equilibrium are listed in the following:

Sr-90 Y-90
Zr-93 Nb-93m
Zr-97 Nb-97
Ru-106 Rh-106
Cs-137 Ba-137m
Ce-134 La-134
Ce-144 Pr-144
Ba-140 La-140
Bi-212 Tl-208 (0.36), Po-212 (0.64)
Pb-210 Bi-210, Po-210

Pb-212 Bi-212, Tl-208 (0.36), Po-212 (0.64)
Rn-220 Po-216
Rn-222 Po-218, Pb-214, Bi-214, Po-214
Ra-223 Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224 Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Ra-226 Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Ra-228 Ac-228
Th-226 Ra-222, Rn-218, Po-214
Th-228 Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-229 Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-209
Th-nat Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-234 Pa-234m
U-230 Th-226, Ra-222, Rn-218, Po-214
U-232 Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
U-235 Th-231
U–238 Th-234, Pa-234m
U-nat Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214,
U-240 Np-240m
Np-237 Pa-233
Am-242m Am-242
Am-243 Np-239

(c) The quantity may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.

(d) These values apply only to compounds of uranium that take the chemical form of UF6, UO2F2 and UO2(NO3)2 in both normal and accident conditions of transport.

(e) These values apply only to compounds of uranium that take the chemical form of UO3, UF4, UCl4 and hexavalent compounds in both normal and accident conditions of transport.

(f) These values apply to all compounds of uranium other than those specified in (d) and (e) above.

(g) These values apply to unirradiated uranium only.

TABLE A–3.—GENERAL VALUES FOR A^1 AND A^2

Contents	A^{-1}		A^{-2}		Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limits for exempt consignments (Bq)	Activity limits for exempt consignments (Ci)
	(TBq)	(Ci)	(TBq)	(Ci)				
Only beta or gamma emitting radionuclides are known to be present.	1×10^{-1}	2.7×10^{0}	2×10^{-2}	5.4×10^{-1}	1×10^{1}	2.7×10^{-10}	1×10^{4}	2.7×10^{-7}
Only alpha emitting radionuclides are known to be present.	2×10^{-1}	5.4×10^{0}	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}
No relevant data are available.	1×10^{-3}	2.7×10^{-2}	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}

TABLE A–4.—ACTIVITY-MASS RELATIONSHIPS FOR URANIUM

Uranium Enrichment [1] wt % U–235 present	Specific activity	
	TBq/g	Ci/g
0.45	1.8×10^{-8}	5.0×10^{-7}
0.72	2.6×10^{-8}	7.1×10^{-7}
1.0	2.8×10^{-8}	7.6×10^{-7}
1.5	3.7×10^{-8}	1.0×10^{-6}
5.0	1.0×10^{-7}	2.7×10^{-6}
10.0	1.8×10^{-7}	4.8×10^{-6}

TABLE A–4.—ACTIVITY-MASS RELATIONSHIPS FOR URANIUM—Continued

Uranium Enrichment [1] wt % U–235 present	Specific activity	
	TBq/g	Ci/g
20.0	3.7×10^{-7}	1.0×10^{-5}
35.0	7.4×10^{-7}	2.0×10^{-5}
50.0	9.3×10^{-7}	2.5×10^{-5}
90.0	2.2×10^{-6}	2.8×10^{-5}
93.0	2.6×10^{-6}	7.0×10^{-5}

TABLE A–4.—ACTIVITY-MASS RELATIONSHIPS FOR URANIUM—Continued

Uranium Enrichment [1] wt % U–235 present	Specific activity	
	TBq/g	Ci/g
95.0	3.4×10^{-6}	9.1×10^{-5}

[1] The figures for uranium include representative values for the activity of the uranium-234 that is concentrated during the enrichment process.

Dated at Rockville, Maryland, this 29th day of March, 2002.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 02–8108 Filed 4–29–02; 8:45 am]

BILLING CODE 7590–01–P

Federal Register

Tuesday,
April 30, 2002

Part IV

Department of Defense

Office of the Secretary

32 CFR Parts 21, 22, et al.
DoD Grant and Agreement Regulations; Proposed Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 21, 22, 32, 34, and 37

RIN 0790–AG87

DoD Grant and Agreement Regulations

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes to add a new part to the DoD Grant and Agreement Regulations (DoDGARs) to incorporate policies and procedures for the award and administration of technology investment agreements (TIAs). TIAs are a relatively new class of assistance instruments. DoD Components use TIAs to support or stimulate defense research projects involving for-profit firms, especially commercial firms that do business primarily in the commercial marketplace. The new part therefore gives DoD agreements officers greater flexibility to negotiate award provisions in areas that can present barriers to those commercial firms (e.g., intellectual property, audits, and cost principles). This notice of proposed rulemaking also proposes revisions to several additional parts of the DoDGARs, to conform the rest of the DoDGARs with the proposed new part.

DATES: Comments are due on or before July 1, 2002.

ADDRESSES: Forward comments to ODDR&E(R), ATTN: Mark Herbst, 3080 Defense Pentagon, Washington, DC 20301–3080.

FOR FURTHER INFORMATION CONTACT: Mark Herbst, (703) 696–0372.

SUPPLEMENTARY INFORMATION:

A. Background

The Congress and the DoD have a civil-military integration policy that envisions a national technology and industrial base capable of meeting national security objectives, including the performance of research and development to ensure that our armed forces have systems with superior technology. The policy calls for DoD reliance, to the maximum extent practicable, on the commercial sector of that technology and industrial base.

To help achieve civil-military integration, the Congress in 1989 enacted 10 U.S.C. 2371, ''Research projects: transactions other than contracts and grants'' to authorize DoD use of cooperative agreements and other transactions. Using this authority, DoD Components through the mid-1990s developed types of cooperative agreements and other transactions to support research (called ''dual-use'' research) with good potential for both commercial and defense applications. The DoD in 1997 issued interim guidance that merged various cooperative agreements and other transactions that were similar to each other into a single class of assistance instruments called technology investment agreements (TIAs). This proposed rule is the first step toward putting in place rules of a more permanent nature, based on the experience with these new instruments.

B. Discussion of Proposed Part 37

Coverage, In Relation To Rules For Other Assistance Instruments

The subjects covered for TIAs in the proposed part 37 parallel those covered for grants and most cooperative agreements in parts 22, 32, 33, and 34 of the DoD Grant and Agreement Regulations (DoDGARs). This creates a comprehensive and stand-alone part for TIAs, which we judge to be the best way to have clear policy and procedural guidance that properly maintains distinctions between TIAs and other assistance instruments.

The subparts of the proposed part 37 address chronologically DoD agreements officers' pre-award through post-award responsibilities for TIAs. The coverage in most of the subparts largely parallels what is covered for other assistance instruments in part 22 of the DoDGARs. Two subparts of the proposed part 37, subparts F and G, address award terms related to administrative requirements for TIAs. The coverage in those two subparts most closely parallels what is covered for other assistance instruments in parts 32 and 33 of the DoDGARs, for various types of nonprofit recipients, and in part 34 for for-profit recipients.

Plain Language Format

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. A Presidential memorandum of June 2, 1998, requires agencies to write new regulations in plain language. We used a question and answer format for this rule to make it more readable. We invite your comments on how to make the proposed rule easier to understand.

Effect of Rule on Recipients

The proposed part 37 speaks to the DoD agreements officer who awards or administers TIAs, rather than to the TIA recipient. However, the part also affects TIA recipients because it tells the agreements officer how to craft award terms and conditions that legally bind the recipient, as well as the Federal Government. We therefore would appreciate any comments that you may have on the requirements in this proposed rule that would apply to you as a potential TIA recipient. The following paragraphs describe the subparts of the proposed part and highlight some requirements affecting recipients.

Agreement Types and Authorities (Subpart A)

Subpart A of the proposed part 37 contains general information about TIAs for DoD Components and agreements officers. It has little potential effect on recipients.

Situations for Use of TIAs (Subpart B)

Subpart B of the proposed part 37 tells the agreements officer when he or she appropriately may use a TIA. Three sections of this subpart may affect TIA recipients.

First, section 37.210 encourages awards to consortia, as a way to increase recipient self-governance. It suggests that agreements officers consider other ways to increase self-governance before making awards to single firms or multiple firms in prime award-subaward relationships.

Second, section 37.215 states that recipients are to provide, to the maximum extent practicable, at least half of the costs of research projects supported by TIAs. This is a statutory condition for any TIA using the authority of 10 U.S.C. 2371 and a matter of policy for other TIAs. The reason that cost sharing is appropriate is that TIAs are used to support dual-use research that is of mutual benefit to the DoD and recipients because it has good potential for both defense and commercial applications. The purpose of the cost share is to ensure that recipients have a vested interest in the projects' success.

Third, section 37.230 clarifies that agreements officers are not to use TIAs in cases where a recipient is to receive fee or profit, in accordance with DoD policy stated in part 22 of the DoDGARs (32 CFR part 22). The basis for the policy is that fee or profit, while appropriate for a procurement contract used in a buyer-seller relationship, is not appropriate for an assistance instrument used to stimulate or support a project of mutual interest to the recipient and the Government.

Types of TIAs (Subpart C)

Subpart C of the proposed part 37 describes a new type of assistance instrument called a fixed-support TIA that agreements officers may use under certain conditions. With a fixed-support

TIA, the Government agrees to award a set amount of money to support a portion of the costs of a research project that has well-defined and verifiable outcomes. The advantage to a recipient is that this type of TIA lessens Government-unique requirements in areas, such as audits and cost accounting, that present barriers to some commercial firms. We invite comments on the concept of fixed-support TIAs because there is little practical experience with them—almost all TIAs to date have been expenditure-based.

Competition (Subpart D)

Subpart D of the proposed part 37 states the policy for agreements officers to use merit-based competitive procedures to award TIAs and discusses the content of the program announcement or solicitation.

Pre-Award Business Evaluation (Subpart E)

Subpart E of the proposed part 37 addresses agreements officers' responsibilities, prior to awarding TIAs, for determining that potential recipients are qualified and evaluating business aspects of the proposed transactions.

Award Terms Based on Administrative Requirements (Subparts F and G)

The portions of the proposed part 37 with the greatest potential for affecting recipients are subparts F and G, which specify administrative requirements for TIAs. Subpart F addresses organization-wide system requirements for financial management, property management, and purchasing. To reduce administrative burdens, the general policy in Subpart F is to have each type of organization that participates in a TIA continue to use its present systems. Subpart G addresses award-specific administrative requirements, such as payment methods. The general policy in subpart G is to simplify administration by making these award-specific requirements uniform for different organizations participating in a given award, since the requirements do not compel changes in organizations' systems.

Overall, subparts F and G give agreements officers considerable latitude to negotiate award provisions in areas that sometimes are sources of concern for commercial firms. We appreciate that commercial firms often are not familiar with usual Government-unique requirements and may not always agree with them.

One portion of subpart F that should be of particular interest to potential recipients is the portion in §§ 37.640 through 37.680 that addresses audit requirements for expenditure-based TIAs. Under § 37.650, agreements officers may authorize use of Independent Public Accountants (IPAs) for audits of for-profit firms under certain conditions. When IPAs are used, paragraph (c) of § 37.660 requires the audits to be performed in accordance with the Generally Accepted Government Auditing Standards (GAGAS) issued by the General Accounting Office. Much of the GAGAS parallel the Generally Accepted Auditing Standards (GAAS) used in the commercial sector, and we ask that any comments raising issues with the use of the GAGAS rather than the GAAS identify the specific GAGAS provisions that are at issue.

The portion of subpart F addressing property requirements also may be of particular interest to some for-profit firms. Section 37.685 establishes the general policy for capital assets, including equipment, that for-profit firms may need to perform research under TIAs. The policy calls for including only depreciation or use charges for capital assets as costs under a TIA in most cases. Under § 37.685, an agreements officer may grant an exception and permit a firm to charge the full acquisition cost of a capital asset to the research project. However, the DoD does not have statutory authority to give a for-profit recipient unconditional title to a capital asset purchased in whole or in part with Federal funds, unless the property is consumed in the project. Therefore, when the full acquisition cost of a capital asset is charged to the project, subpart F provides that the recipient will take title to the property and that the Government will have an interest in the property until the end of the project. At that time, the recipient will reimburse the Federal Government for its share of the residual value of the asset, if the fair market value of the property at that time is $5,000 or more.

Executing the Award (Subpart H)

Subpart H of the proposed part 37 details agreements officers' responsibilities at the time of award. The section that likely is of most interest to potential TIA recipients is § 37.1010, which lists substantive issues that the award document must address.

Post-Award Administration and Definitions (Subparts I and J)

Subpart I, on post-award administration, largely addresses internal agency procedures and has little potential effect on recipients. Definitions of terms used in the proposed part 37 are in subpart J.

C. Discussion of Proposed Conforming Changes to Other Parts

In addition to proposing to adopt the new part 37, the DoD is proposing to make conforming changes to other DoDGARs parts. The most significant changes are to part 21, which is the part of the DoDGARs that sets out DoD Components' general responsibilities for managing assistance functions. We are proposing to amend part 21 to apply to TIAs, as well as to other types of assistance instruments. We also are proposing to recast Part 21 in a plain language format like that of the new part 37. Given this significant revision, we are publishing part 21 in its entirety in this notice of proposed rulemaking. We also are proposing very minor changes to other DoDGARs parts, to conform those parts to the revised part 21.

Executive Order 12866

This proposed regulatory action is not a significant regulatory action, as defined by Executive Order 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This proposed regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This proposed regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This proposed regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This proposed regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects

32 CFR Part 21

Grant programs, Grants administration.

32 CFR Part 22

Accounting, Grant programs, Grants administration, Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Colleges and universities, Grant programs, Grants administration, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 34

Accounting, Business and industry, Grant programs, Grants administration, Reporting and recordkeeping requirements.

32 CFR Part 37

Accounting, administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Approved: April 19, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

Accordingly, Title 32 of the Code of Federal Regulations, Chapter I, Subchapter B is proposed to be amended as follows.

1. Part 21 is revised to read as follows:

PART 21—DoD GRANTS AND AGREEMENTS—GENERAL MATTERS

Subpart A—Introduction

21.100 What are the purposes of this part?

Subpart B—Defense Grant and Agreement Regulatory System

21.200 What is the Defense Grant and Agreement Regulatory System (DGARS)?
21.205 What types of instruments are covered by the DGARS?
21.210 What are the purposes of the DGARS?
21.215 Who is responsible for the DGARS?
21.220 What publications are in the DGARS?

Subpart C—The DoD Grant and Agreement Regulations

21.300 What instruments are subject to the DoD Grant and Agreement Regulations (DoDGARs)?
21.305 What is the purpose of the DoDGARs?
21.310 Who ensures DoD Component compliance with the DoDGARs?
21.315 May DoD Components issue supplemental policies and procedures to implement the DoDGARs?
21.320 Are there areas in which DoD Components must establish policies and procedures to implement the DoDGARs?
21.325 Do acquisition regulations also apply to DoD grants and agreements?
21.330 How are the DoDGARs published and maintained?
21.335 Who can authorize deviations from the DoDGARs?
21.340 What are the procedures for requesting and documenting deviations?

Subpart D—Authorities and Responsibilities for Making and Administering Assistance Awards

21.400 To what instruments does this subpart apply?
21.405 What is the purpose of this subpart?
21.410 Must a DoD Component have statutory authority to make an assistance award?
21.415 Must the statutory authority specifically mention the use of grants or other assistance instruments?
21.420 Under what types of statutory authorities do DoD Components award assistance instruments?
21.425 How does a DoD Component's authority flow to awarding and administering activities?
21.430 What are the responsibilities of the head of the awarding or administering activity?
21.435 Must DoD Components formally select and appoint grants officers and agreements officers?
21.440 What are the standards for selecting and appointing grants officers and agreements officers?
21.445 What are the requirements for a grants officer's or agreements officer's statement of appointment?
21.450 What are the requirements for a termination of a grants officer's or agreements officer's appointment?
21.455 Who can sign, administer, or terminate assistance instruments?
21.460 What is the extent of grants officers' and agreements officers' authority?
21.465 What are grants officers' and agreements officers' responsibilities?

Subpart E—Information Reporting on Awards Subject to 31 U.S.C. Chapter 61

21.500 What is the purpose of this subpart?
21.505 What is the Catalog of Federal Domestic Assistance (CFDA)?
21.510 Why does the DoD report information to the CFDA?
21.515 Who reports the information for the CFDA?
21.520 What are the purposes of the Defense Assistance Awards Data System (DAADS)?
21.525 Who issues policy guidance for the DAADS?
21.530 Who operates the DAADS?
21.535 Do DoD Components have central points for collecting DAADS data?
21.540 What are the duties of the DoD Components' central points for the DAADS?
21.545 Must DoD Components report every obligation to the DAADS?
21.550 Must DoD Components relate reported actions to listings in the CFDA?
21.555 When and how must DoD Components report to the DAADS?
21.560 Must DoD Components assign numbers uniformly to awards?

Subpart F—Definitions

21.605 Acquisition.
21.610 Agreements officer.
21.615 Assistance.
21.620 Award.
21.625 Contract.
21.630 Contracting activity.
21.635 Contracting officer.
21.640 Cooperative agreement.
21.645 Deviation.
21.650 DoD Components.
21.655 Grant.
21.660 Grants officer.
21.665 Nonprocurement instrument.
21.670 Procurement contract.
21.675 Recipient.
21.680 Technology investment agreements.

Appendix A to Part 21—Instruments to Which DoDGARs Portions Apply

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A— Introduction

§ 21.100 What are the purposes of this part?

This part of the DoD Grant and Agreement Regulations:

(a) Provides general information about the Defense Grant and Agreement Regulatory System (DGARS).

(b) Sets forth general policies and procedures related to DoD Components' overall management of functions related to assistance and certain other nonprocurement instruments subject to the DGARS (see § 21.205(b)).

Subpart B—Defense Grant and Agreement Regulatory System

§ 21.200 What is the Defense Grant and Agreement Regulatory System (DGARS)?

The Defense Grant and Agreement Regulatory System (DGARS) is the system of regulatory policies and procedures for the award and administration of DoD Components' assistance and other nonprocurement awards. DoD Directive 3210.6[1] established the DGARS.

§ 21.205 What types of instruments are covered by the DGARS?

The Defense Grant and Agreement Regulatory System (DGARS) applies to the following types of funding instruments awarded by DoD Components:

(a) All grants, cooperative agreements, and technology investment agreements.

(b) Other nonprocurement instruments, as needed to implement statutes, Executive orders, or other Federal Governmentwide rules that apply to those other nonprocurement instruments, as well as to grants and cooperative agreements.

[1] Electronic copies may be obtained at the Internet site *http://www.dtic.mil/whs/directives.* Paper copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Authorized users may obtain copies from the Defense Technical Information Center, 8725 John J. Kingman Rd., Suite 0944, Fort Belvoir, VA 22060–6218.

§ 21.210 What are the purposes of the DGARS?

The purposes of the DGARS are to provide uniform policies and procedures for DoD Components' awards, in order to meet DoD needs for:

(a) Efficient program execution, effective program oversight, and proper stewardship of Federal funds.

(b) Compliance with relevant statutes; Executive orders; and applicable guidance, such as Office of Management and Budget (OMB) circulars.

(c) Collection from DoD Components, retention, and dissemination of management and fiscal data related to awards.

§ 21.215 Who is responsible for the DGARS?

The Director of Defense Research and Engineering, or his or her designee, develops and implements DGARS policies and procedures. He or she does so by issuing and maintaining the DoD publications that comprise the DGARS.

§ 21.220 What publications are in the DGARS?

A DoD publication (DoD 3210.6-R[2]) entitled ''The DoD Grant and Agreement Regulations'' is the principal element of the DGARS. The Director of Defense Research and Engineering also may publish

DGARS policies and procedures in DoD instructions and other DoD publications, as appropriate.

Subpart C—The DoD Grant and Agreement Regulations

§ 21.300 What instruments are subject to the DoD Grant and Agreement Regulations (DoDGARs)?

(a) The types of instruments that are subject to the DoDGARs vary from one portion of the DoDGARs to another. The types of instruments include grants, cooperative agreements, and technology investment agreements. Some portions of the DoDGARs apply to other types of assistance or nonprocurement instruments. The term ''awards,'' as defined in subpart D of this part, is used in this part to refer collectively to all of the types of instruments that are subject to one or more portions of the DoDGARs.

(b) Note that each portion of the DoDGARs identifies the types of instruments to which it applies. However, grants officers and agreements officers must exercise caution when determining the applicability of some Governmentwide rules that are included within the DoDGARs, because a term may be defined differently in a Governmentwide rule than it is defined elsewhere in the DoDGARs. One example is part 33 of the DoDGARs (32 CFR part 33), which contains administrative requirements for awards to State and local governments. That DoDGARs part is the DoD's codification of the Governmentwide rule implementing OMB Circular A–102.[3] Part 33 states that it applies to grants, but defines the term ''grant'' to include cooperative agreements and other forms of financial assistance.

(c) For convenience, the table in appendix A to this part provides an overview of the applicability of the various portions of the DoDGARs.

§ 21.305 What is the purpose of the DoDGARs?

The DoD Grant and Agreement Regulations provide uniform policies and procedures for the award and administration of DoD Components' awards. The DoDGARs are the primary DoD regulations for achieving the DGARS purposes described in § 21.210.

§ 21.310 Who ensures DoD Component compliance with the DoDGARs?

The Head of each DoD Component that makes or administers awards, or his or her designee, is responsible for ensuring compliance with the DoDGARs within that DoD Component.

§ 21.315 May DoD Components issue supplemental policies and procedures to implement the DoDGARs?

Yes, Heads of DoD Components or their designees may issue regulations, procedures, or instructions to implement the DGARS or supplement the DoDGARs to satisfy needs that are specific to the DoD Component, as long as the regulations, procedures, or instructions do not impose additional costs or administrative burdens on recipients or potential recipients.

§ 21.320 Are there areas in which DoD Components must establish policies and procedures to implement the DoDGARs?

Yes, Heads of DoD Components or their designees must establish policies and procedures in areas where uniform policies and procedures throughout the DoD Component are required, such as for:

(a) Requesting class deviations from the DoDGARs (see §§ 21.335(b) and 21.340(a)) or exemptions from the provisions of 31 U.S.C. 6301 *et seq.*, that govern the appropriate use of contracts, grants, and cooperative agreements (*see* 32 CFR 22.220).

(b) Designating one or more Grant Appeal Authorities to resolve claims, disputes, and appeals (*see* 32 CFR 22.815).

(c) Reporting data on assistance awards and programs, as required by 31 U.S.C. chapter 61 (*see* subpart C of this part).

(d) Prescribing requirements for use and disposition of real property acquired under awards, if the DoD Component makes any awards to institutions of higher education or to other nonprofit organizations under which real property is acquired in whole or in part with Federal funds (*see* 32 CFR 32.32).

§ 21.325 Do acquisition regulations also apply to DoD grants and agreements?

Unless the DoDGARs specify that they apply, policies and procedures in the following acquisition regulations that apply to procurement contracts do not apply to grants, cooperative agreements, technology investment agreements, or to other assistance or nonprocurement awards:

(a) The Federal Acquisition Regulation (FAR) (48 CFR parts 1–53).

(b) The Defense Federal Acquisition Regulation Supplement (DFARS) (48 CFR parts 201–270).

(c) DoD Component supplements to the FAR and DFARS.

§ 21.330 How are the DoDGARs published and maintained?

(a) The DoD publishes the DoDGARs in Chapter I, Subchapter B, Title 32 of the Code of Federal Regulations (CFR) and in a separate internal DoD document (DoD 3210.6–R). The DoD document is divided into parts, subparts, and sections, to parallel the CFR publication. Cross-references within the DoDGARs are stated as CFR citations (e.g., a reference to section 21.215 in part 21 would be to 32 CFR 21.215).

(b) The DoD publishes updates to the DoDGARs in the **Federal Register**. When finalized, the DoD also posts the updates to the internal DoD document on the World Wide Web at *http://www.dtic.mil/whs/directives.*

(c) A standing working group recommends revisions to the DoDGARs to the Director of Defense Research and Engineering (DDR&E). The DDR&E, Director of Defense Procurement, and each Military Department must be represented on the working group. Other DoD Components that make or administer awards may also nominate representatives. The working group meets when necessary.

[2] See footnote 1 to § 21.200.

[3] Electronic copies may be obtained at the Internet site *http://www.whitehouse.gov/OMB.* For paper copies, contact the Office of Management and Budget, EOP Publications, 725 17th St. NW., New Executive Office Building, Washington, DC 20503.

§ 21.335 Who can authorize deviations from the DoDGARs?

(a) The Head of the DoD Component or his or her designee may authorize individual deviations from the DoDGARs, which are deviations that affect only one award, if the deviations are not prohibited by statute, executive order or regulation.

(b) The Director of Defense Research and Engineering (DDR&E) or his or her designee must approve in advance any class deviation that affects more than one award. Note that OMB concurrence also is required for class deviations from two parts of the DoDGARs, 32 CFR parts 32 and 33, in accordance with 32 CFR 32.4 and 33.6, respectively.

§ 21.340 What are the procedures for requesting and documenting deviations?

(a) DoD Components must submit copies of justifications and agency approvals for individual deviations and written requests for class deviations to: Deputy Director of Defense Research and Engineering, ATTN: Basic Research, 3080 Defense Pentagon, Washington DC 20301–3080.

(b) Grants officers and agreements officers must maintain copies of requests and approvals for individual and class deviations in award files.

Subpart D—Authorities and Responsibilities for Making and Administering Assistance Awards

§ 21.400 To what instruments does this subpart apply?

This subpart applies to grants, cooperative agreements, and technology investment agreements, which are legal instruments used to reflect assistance relationships between the United States Government and recipients.

§ 21.405 What is the purpose of this subpart?

This subpart describes the sources and flow of authority to make or administer assistance awards, and assigns the broad responsibilities associated with DoD Components' use of those instruments.

§ 21.410 Must a DoD Component have statutory authority to make an assistance award?

Yes, the use of an assistance instrument to carry out a program requires authorizing legislation. That is unlike the use of a procurement contract, for which Federal agencies have inherent, Constitutional authority.

§ 21.415 Must the statutory authority specifically mention the use of grants or other assistance instruments?

No, the statutory authority described in § 21.410 need not specifically say that the purpose of the program is assistance or mention the use of any type of assistance instrument. However, the intent of the statute must support a judgment that the use of an assistance instrument is appropriate. For example, a DoD Component may judge that the principal purpose of a program for which it has authorizing legislation is assistance, rather than acquisition. The DoD Component would properly use an assistance instrument to carry out that program, in accordance with 31 U.S.C. chapter 63.

§ 21.420 Under what types of statutory authorities do DoD Components award assistance instruments?

DoD Components may use assistance instruments under a number of statutory authorities that fall into three categories:

(a) *Authorities that statutes provide to the Secretary of Defense.* These authorities generally are delegated by the Secretary of Defense to Heads of DoD Components, usually through DoD directives, instructions, or policy memoranda that are not part of the Defense Grant and Agreement Regulatory System. Examples of statutory authorities in this category are:

(1) Authority under 10 U.S.C. 2391 to award grants or cooperative agreements to help State and local governments alleviate serious economic impacts of defense program changes (e.g., base openings and closings, contract changes, and personnel reductions and increases).

(2) Authority under 10 U.S.C. 2413 to enter into cooperative agreements with entities that furnish procurement technical assistance to businesses.

(b) *Authorities that statutes may provide directly to Heads of DoD Components.* When a statute authorizes the Head of a DoD Component to use a funding instrument to carry out a program with a principal purpose of assistance, use of that authority requires no delegation by the Secretary of Defense. For example, 10 U.S.C. 2358 authorizes the Secretaries of the Military Departments, in addition to the Secretary of Defense, to perform research and development projects through grants and cooperative agreements. Similarly, 10 U.S.C. 2371 provides authority for the Secretaries of the Military Departments and Secretary of Defense to carry out basic, applied, or advanced research projects using assistance instruments other than grants and cooperative agreements. A Military Department's use of the authority of 10 U.S.C. 2358 or 10 U.S.C. 2371 therefore requires no delegation by the Secretary of Defense.

(c) *Authorities that arise indirectly as the result of statute.* For example, authority to use an assistance instrument may result from:

(1) A federal statute authorizing a program that is consistent with an assistance relationship (i.e., the support or stimulation of a public purpose, rather than the acquisition of a good or service for the direct benefit of the Department of Defense). In accordance with 31 U.S.C. chapter 63, such a program would appropriately be carried out through the use of grants or cooperative agreements. Depending upon the nature of the program (e.g., research) and whether the program statute includes authority for any specific types of instruments, there also may be authority to use other assistance instruments.

(2) Exemptions requested by the Department of Defense and granted by the Office of Management and Budget under 31 U.S.C. 6307, as described in 32 CFR 22.220.

§ 21.425 How does a DoD Component's authority flow to awarding and administering activities?

The Head of a DoD Component, or his or her designee, may delegate to the heads of contracting activities (HCAs) within the Component, that Component's authority to make and administer awards, to appoint grants officers and agreements officers (see §§ 21.435 through 21.450), and to broadly manage the DoD Component's functions related to assistance instruments. The HCA is the same official (or officials) designated as the head of the contracting activity for procurement contracts, as defined at 48 CFR 2.101. The intent is that overall management responsibilities for a DoD Component's functions related to nonprocurement instruments be assigned only to officials that have similar responsibilities for procurement contracts.

§ 21.430 What are the responsibilities of the head of the awarding or administering activity?

When designated by the Head of the DoD Component or his or her designee (see 32 CFR 21.425), the head of the awarding or administering activity (i.e., the HCA) is responsible for the awards made by or assigned to that activity. He or she must supervise and establish internal policies and procedures for that activity's awards.

§ 21.435 Must DoD Components formally select and appoint grants officers and agreements officers?

Yes, each DoD Component that awards grants or enters into cooperative

agreements must have a formal process (see § 21.425) for selecting and appointing grants officers and for terminating their appointments. Similarly, each DoD Component that awards or administers technology investment agreements must have a process for selecting and appointing agreements officers and for terminating their appointments.

§ 21.440 What are the standards for selecting and appointing grants officers and agreements officers?

In selecting grants officers and agreements officers, DoD Components must use the following minimum standards:

(a) In selecting a grants officer, the appointing official must judge whether the candidate has the necessary experience, training, education, business acumen, judgment, and knowledge of assistance instruments and contracts to function effectively as a grants officer. The appointing official also must take those attributes of the candidate into account when deciding the complexity and dollar value of the grants and cooperative agreements to be assigned.

(b) In selecting an agreements officer, the appointing official must consider all of the same factors as in paragraph (a) of this section. In addition, the appointing official must consider the candidate's ability to function in the less structured environment of technology investment agreements, where the rules provide more latitude and the individual must have a greater capacity for exercising judgment. Agreements officers therefore should be individuals who have demonstrated expertise in executing complex assistance and acquisition instruments.

§ 21.445 What are the requirements for a grants officer's or agreements officer's statement of appointment?

A statement of a grants officer's or agreements officer's appointment:

(a) Must be in writing.

(b) Must clearly state the limits of the individual's authority, other than limits contained in applicable laws or regulations. Information on those limits of a grants officer's or agreements officer's authority must be readily available to the public and agency personnel.

(c) May, if the individual is a contracting officer, be incorporated into the his or her statement of appointment as a contracting officer (i.e., there does not need to be a separate written statement of appointment for assistance instruments).

§ 21.450 What are the requirements for a termination of a grants officer's or agreements officer's appointment?

A termination of a grants officer's or agreements officer's authority:

(a) Must be in writing, unless the written statement of appointment provides for automatic termination.

(b) May not be retroactive.

(c) May be integrated into a written termination of the individual's appointment as a contracting officer, as appropriate.

§ 21.455 Who can sign, administer, or terminate assistance instruments?

Only grants officers are authorized to sign, administer, or terminate grants or cooperative agreements (other than technology investment agreements) on behalf of the Department of Defense. Similarly, only agreements officers may sign, administer, or terminate technology investment agreements.

§ 21.460 What is the extent of grants officers' and agreements officers' authority?

Grants officers and agreements officers may bind the Government only to the extent of the authority delegated to them in their written statements of appointment (see § 21.445).

§ 21.465 What are grants officers' and agreements officers' responsibilities?

Grants officers and agreements officers should be allowed wide latitude to exercise judgment in performing their responsibilities, which are to ensure that:

(a) Individual awards are used effectively in the execution of DoD programs, and are made and administered in accordance with applicable laws, Executive orders, regulations, and DoD policies.

(b) Sufficient funds are available for obligation.

(c) Recipients of awards receive impartial, fair, and equitable treatment.

Subpart E—Information Reporting on Awards Subject to 31 U.S.C. Chapter 61

§ 21.500 What is the purpose of this subpart?

This subpart prescribes policies and procedures for compiling and reporting data related to DoD awards and programs that are subject to information reporting requirements of 31 U.S.C. chapter 61. That chapter of the U.S. Code requires the Office of Management and Budget to maintain a Governmentwide information system to collect data on Federal agencies' domestic assistance awards and programs.

§ 21.505 What is the Catalog of Federal Domestic Assistance (CFDA)?

The Catalog of Federal Domestic Assistance (CFDA) is a Governmentwide compilation of information about domestic assistance programs. It covers all domestic assistance programs and activities, regardless of the number of awards made under the program, the total dollar value of assistance provided, or the duration. In addition to programs using grants and agreements, covered programs include those providing assistance in other forms, such as payments in lieu of taxes or indirect assistance resulting from Federal operations.

§ 21.510 Why does the DoD report information to the CFDA?

The Federal Program Information Act (31 U.S.C. 6101 *et seq.*), as implemented through OMB Circular A–89,[4] requires the Department of Defense and other Federal agencies to provide certain information about their domestic assistance programs to the OMB and the General Services Administration (GSA). The GSA makes this information available to the public by publishing it in the Catalog of Federal Domestic Assistance (CFDA) and maintaining the Federal Assistance Programs Retrieval System, a computerized data base of the information.

§ 21.515 Who reports the information for the CFDA?

(a) Each DoD Component that provides domestic financial assistance must:

(1) Report to the Director of Information, Operations and Reports, Washington Headquarters Services (DIOR, WHS) all new programs and changes as they occur or as the DoD Component submits its annual updates to existing CFDA information.

(2) Identify to the DIOR, WHS a point-of-contact who will be responsible for reporting the program information and for responding to inquiries related to it.

(b) The DIOR, WHS is the Department of Defense's single office for collecting, compiling and reporting such program information to the OMB and GSA.

§ 21.520 What are the purposes of the Defense Assistance Awards Data System (DAADS)?

Data from the Defense Assistance Awards Data System (DAADS) are used to provide:

(a) DoD inputs to meet statutory requirements for Federal Governmentwide reporting of data related to obligations of funds by assistance instrument.

[4] See footnote 3 to § 21.300(b).

(b) A basis for meeting Governmentwide requirements to report to the Federal Assistance Awards Data System (FAADS) maintained by the Department of Commerce and for preparing other recurring and special reports to the President, the Congress, the General Accounting Office, and the public. DoD Components' reporting of DAADS data, as used by the DoD to meet the Governmentwide requirements to report to the FAADS, is assigned Interagency Report Control Number 0252–DOC–QU.

(c) Information to support policy formulation and implementation and to meet management oversight requirements related to the use of awards.

§ 21.525 Who issues policy guidance for the DAADS?

The Deputy Director, Defense Research and Engineering (DDDR&E), or his or her designee, issues necessary policy guidance for the Defense Assistance Awards Data System.

§ 21.530 Who operates the DAADS?

The Director of Information Operations and Reports, Washington Headquarters Services (DIOR, WHS), consistent with guidance issued by the DDDR&E:

(a) Processes DAADS information on a quarterly basis and prepares recurring and special reports using such information.

(b) Prepares, updates, and disseminates instructions for reporting information to the DAADS. The instructions are to specify procedures, formats, and editing processes to be used by DoD Components, including record layout, submission deadlines, media, methods of submission, and error correction schedules.

§ 21.535 Do DoD Components have central points for collecting DAADS data?

Each DoD Component must have a central point for collecting DAADS information from contracting activities within that DoD Component. The central points are as follows:

(a) For the Army: As directed by the U.S. Army Contracting Support Agency.

(b) For the Navy: As directed by the Office of Naval Research.

(c) For the Air Force: As directed by the Office of the Secretary of the Air Force, Acquisition Contracting Policy and Implementation Division (SAF/AQCP).

(d) For the Office of the Secretary of Defense, Defense Agencies, and DoD Field Activities: Each Defense Agency must identify a central point for collecting and reporting DAADS information to the DIOR, WHS, at the address given in § 21.555(a). DIOR, WHS serves as the central point for offices and activities within the Office of the Secretary of Defense and for DoD Field Activities.

§ 21.540 What are the duties of the DoD Components' central points for the DAADS?

The office that serves, in accordance with § 21.535, as the central point for collecting DAADS information from contracting activities within each DoD Component must:

(a) Establish internal procedures to ensure reporting by contracting activities that make awards subject to 31 U.S.C. chapter 61.

(b) Collect information required by DD Form 2566 [5], ''DoD Assistance Award Action Report,'' from those contracting activities, and report it to DIOR, WHS, in accordance with §§ 21.545 through 21.555.

(c) Submit to the DIOR, WHS, any recommended changes to the DAADS.

§ 21.545 Must DoD Components report every obligation to the DAADS?

Yes, DoD Components' central points must collect and report the data required by the DD Form 2566 for each individual action that involves the obligation or deobligation of Federal funds for an award that is subject to 31 U.S.C. chapter 61.

§ 21.550 Must DoD Components relate reported actions to listings in the CFDA?

Yes, DoD Components' central points must report each action as an obligation or deobligation under a specific programmatic listing in the Catalog of Federal Domestic Assistance (CFDA, see § 21.505). The programmatic listing to be shown is the one that provided the funds being obligated or deobligated. For example, if a grants officer or agreements officer in one DoD Component obligates appropriations of a second DoD Component's programmatic listing, the grants officer or agreements officer must show the CFDA programmatic listing of the second DoD Component on the DD Form 2566.

§ 21.555 When and how must DoD Components report to the DAADS?

DoD Components' central points must report:

(a) On a quarterly basis to DIOR, WHS. For the first three quarters of the Federal fiscal year, the data are due by close-of-business (COB) on the 15th day after the end of the quarter (i.e., first-quarter data are due by COB on January 15th, second-quarter data by COB April 15th, and third-quarter data by COB July 15th). Fourth-quarter data are due by COB October 25th, the 25th day after the end of the quarter. If any due date falls on a weekend or holiday, the data are due on the next regular workday. The mailing address for DIOR, WHS is 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

(b) On a floppy diskette or by other means permitted either by the instructions described in § 21.530(b) or by agreement with the DIOR, WHS. The data must be reported in the format specified in the instructions.

§ 21.560 Must DoD Components assign numbers uniformly to awards?

Yes, DoD Components must assign identifying numbers to all awards subject to this subpart, including grants, cooperative agreements, and technology investment agreements. The uniform numbering system parallels the procurement instrument identification (PII) numbering system specified in 48 CFR 204.70 (in the ''Defense Federal Acquisition Regulation Supplement''), as follows:

(a) The first six alphanumeric characters of the assigned number must be identical to those specified by 48 CFR 204.7003(a)(1) to identify the DoD Component and contracting activity.

(b) The seventh and eighth positions must be the last two digits of the fiscal year in which the number is assigned to the grant, cooperative agreement, or other nonprocurement instrument.

(c) The 9th position must be a number:

(1) ''1'' for grants.

(2) ''2'' for cooperative agreements, including technology investment agreements that are cooperative agreements (see Appendix C to 32 CFR part 37).

(3) ''3'' for other nonprocurement instruments, including technology investment agreements that are not cooperative agreements.

(d) The 10th through 13th positions must be the serial number of the instrument. DoD Components and contracting activities need not follow any specific pattern in assigning these numbers and may create multiple series of letters and numbers to meet internal needs for distinguishing between various sets of awards.

Subpart F—Definitions

§ 21.605 Acquisition.

The acquiring (by purchase, lease, or barter) of property or services for the direct benefit or use of the United States Government (see more detailed

[5] DD Forms are available at http://www.dior.whs.mil/ICDHOME/FORMTAB.HTM

definition at 48 CFR 2.101). In accordance with 31 U.S.C. 6303, procurement contracts are the appropriate legal instruments for acquiring such property or services.

§ 21.610 Agreements officer.

An official with the authority to enter into, administer, and/or terminate technology investment agreements.

§ 21.615 Assistance.

The transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (see 31 U.S.C. 6101(3)). Grants, cooperative agreements, and technology investment agreements are examples of legal instruments used to provide assistance.

§ 21.620 Award.

A grant, cooperative agreement, technology investment agreement, or other nonprocurement instrument subject to one or more parts of the DoD Grant and Agreement Regulations (see Appendix A to this part).

§ 21.625 Contract.

See the definition for procurement contract in this section.

§ 21.630 Contracting activity.

An activity to which the Head of a DoD Component has delegated broad authority regarding acquisition functions, pursuant to 48 CFR 1.601.

§ 21.635 Contracting officer.

A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. A more detailed definition of the term appears at 48 CFR 2.101.

§ 21.640 Cooperative agreement.

A legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition ''grant''), except that substantial involvement is expected between the Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include ''cooperative research and development agreements'' as defined in 15 U.S.C. 3710a.

§ 21.645 Deviation.

The issuance or use of a policy or procedure that is inconsistent with the DoDGARs.

§ 21.650 DoD Components.

The Office of the Secretary of Defense, the Military Departments, the Defense Agencies, and DoD Field Activities.

§ 21.655 Grant.

A legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(a) Of which the principal purpose is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Department of Defense's direct benefit or use.

(b) In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

§ 21.660 Grants officer.

An official with the authority to enter into, administer, and/or terminate grants or cooperative agreements.

§ 21.665 Nonprocurement instrument.

A legal instrument other than a procurement contract. Examples include instruments of financial assistance, such as grants or cooperative agreements, and those of technical assistance, which provide services in lieu of money.

§ 21.670 Procurement contract.

A legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. See the more detailed definition for contract at 48 CFR 2.101.

§ 21.675 Recipient.

An organization or other entity receiving an award from a DoD Component.

§ 21.680 Technology investment agreements.

A special class of assistance instruments used to increase involvement of commercial firms in defense research programs and for other purposes related to integrating the commercial and defense sectors of the nation's technology and industrial base. Technology investment agreements include one kind of cooperative agreement with provisions tailored for involving commercial firms, as well as one kind of other assistance transaction. Technology investment agreements are described more fully in 32 CFR part 37.

Appendix A to Part 21 — Instruments to Which DoDGARs Portions Apply

DoDGARs * * *	which addresses * * *	applies to * * *
Part 21: (32 CFR part 21), Subpart D and E.	The Defense Grant and Agreement Regulatory System and the DoD Grant and Agreement Regulations.	''awards,'' which are grants, cooperative agreements, technology investment agreements (TIAs), and other nonprocurement instruments subject to one more parts of the DoDGARs.
Part 21: (32 CFR part 21), Subpart D.	Authorities and responsiblities for assistance award and administration.	grants, cooperative agreements, and TIAa.
Part 21: (32 CFR part 21), Subpart E.	DoD Components' information reporting requirements ...	grants, cooperative agreements, TIAs, and other nonprocurement instruments subject to reporting requirements in 31 U.S.C. chapter 61.
Part 22: (32 CFR part 22)	DoD grants officers' responsibilities for award and administration of grants and cooperative agreements.	grants and cooperative agreements other than TIAs.
Part 25: (32 CFR part 25), Suparts A through E.	Governmentwide debarment and suspension requirements.	Nonprocurement generally, which is grants, cooperative agreements, TIAs, and other instruments included in the definition of ''primary covered transaction'' at 32 CFR 25.110(a)(1)(i), with the exceptions identified at 32 CFR 25.110(a)(2).

DoDGARs * * *	which addresses * * *	applies to * * *
Part 25: (32 CFR part 25), Subpart F.	Governmentwide drug-free workplace requirements	financial assistance generally, including cooperative agreements and TIAs, as included in the definition of ''grant'' at 32 CFR 25.605(b)(7).
Part 28: (32 CFR part 28)	Governmentwide restrictions on lobbying	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definitions of ''Federal grant'' and ''Federal cooperative agreement'' at 32 CFR 28.105.
Part 32: (32 CFR part 32)	Administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.	grants, cooperative agreements other than TIAs, and other assistance included in ''award,'' as defined in 32 CFR 32.2. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 33: (32 CFR part 33)	Administrative requirements for grants and agreements with State and local governments.	grants, cooperative agreements other than TIAs, and other assistance included in ''grant,'' as defined in 32 CFR 33.3. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 34: (32 CFR part 34)	Administrative requirements for grants and agreements with for-profit organizations.	grants and cooperative agreements other than TIAs (''awards,'' as defined in 32 CFR 34.2). Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 37: (32 CFR part 37)	Agreements officers' responsibilities for award and administration of TIAs.	TIAs. Note that this part refers to portions of DoDGARs parts 32, 33, and 34 that apply to TIAs.

PART 22—[AMENDED]

2. The authority citation for part 22 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 22.105 [Amended]

3. Section 22.105 is amended by removing ''32 CFR 21.130'' in the first sentence and adding ''32 CFR part 21, subpart F'' in its place.

§ 22.210 [Amended]

4. Section 22.210 is amended by removing ''32 CFR 21.205(b)'' in paragraph (a)(1) and adding ''32 CFR 21.410 through 21.420'' in its place.

§ 22.220 [Amended]

5. Section 22.220 is amended by removing ''32 CFR 21.115(b)(1)'' in paragraph (a)(1) and adding ''32 CFR 21.320(a)'' in its place.

§ 22.605 [Amended]

6. Section 22.605 is amended by removing ''32 CFR part 21, subpart C'' in paragraph (b) and adding ''32 CFR part 21, subpart E'' in its place.

PART 32—[AMENDED]

7. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 32.4 [Amended]

8. Section 32.4 is amended by:

a. Removing ''32 CFR 21.125(a) and (c)'' in paragraph (a) and adding ''32 CFR 21.335(a) and 21.340'' in its place; and

b. Removing ''32 CFR 21.125(b) and (c)'' in paragraph (c)(2) and adding ''32 CFR 21.335(b) and 21.340'' in its place.

§ 32.11 [Amended]

9. Section 32.11 is amended by removing ''32 CFR 21.205(a) and'' in paragraph (a)(2).

PART 34—[AMENDED]

10. The authority citation for part 34 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

11. The definition of ''award'' in § 34.2 is amended to read as follows:

§ 34.2 Definitions.

* * * * *

Award. A grant or a cooperative agreement other than a technology investment agreement (TIA). TIAs are covered by part 37 of the DoDGARs (32 CFR part 37). Portions of this part may apply to a TIA, but only to the extent that 32 CFR part 37 makes them apply.

* * * * *

§ 34.3 [Amended]

12. Section 34.3 is amended by:

a. Removing ''32 CFR 21.125(a)'' in paragraph (a) and adding ''32 CFR 21.335(a) and 21.340'' in its place; and

b. Removing ''32 CFR 21.125(b) and(c)'' in paragraph (c) and adding ''32 CFR 21.335(b) and 21.340'' in its place.

13. Part 37 is added to read as follows:

PART 37—TECHNOLOGY INVESTMENT AGREEMENTS

Subpart A—General

Sec.
37.100 What does this part do?
37.105 Does this part cover all types of instruments that 10 U.S.C. 2371 authorizes?
37.110 What type of instruments are technology investment agreements (TIAs)?
37.115 For what purposes are TIAs used?
37.120 Can my organization award or administer TIAs?
37.125 May I award or administer TIAs if I am authorized to award or administer other assistance instruments?
37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?

Subpart B—Appropriate Use of Technology Investment Agreements

37.200 What are my responsibilities as an agreements officer for ensuring the appropriate use of TIAs?
37.205 What judgments must I make about the nature of the project?
37.210 To what types of recipients may I award a TIA?
37.215 What must I conclude about the recipient's commitment and cost sharing?
37.220 How involved should the Government program official be in the project?
37.225 What judgment must I make about the benefits of using a TIA?
37.230 May I use a TIA if a participant is to receive fee or profit?

Subpart C—Expenditure-Based and Fixed-Support Technology Investment Agreements

37.300 What is the difference between an expenditure-based and fixed-support TIA?
37.305 When may I use a fixed-support TIA?
37.310 When would I use an expenditure-based TIA?
37.315 What are the advantages of using a fixed-support TIA?

Subpart D—Competition Phase

37.400 Must I use competitive procedures to award TIAs?
37.405 What must my announcement or solicitation include?
37.410 Should my announcement or solicitation state that TIAs may be awarded?
37.415 Should I address cost sharing in the announcement or solicitation?
37.420 Should I tell proposers that we will not disclose information that they submit?

Subpart E—Pre-Award Business Evaluation

37.500 What must my pre-award business evaluation address?
37.505 What resources are available to assist me during the pre-award business evaluation?

Recipient Qualification

37.510 What are my responsibilities for determining that a recipient is qualified?
37.515 Must I do anything additional to determine the qualification of a consortium?

Total Funding

37.520 What is my responsibility for determining that the total project funding is reasonable?

Cost Sharing

37.525 What is my responsibility for determining the value and reasonableness of the recipient's cost sharing contribution?
37.530 What criteria do I use in deciding whether to accept a recipient's cost sharing?
37.535 How do I value cost sharing related to real property or equipment?
37.540 May I accept fully depreciated real property or equipment as cost sharing?
37.545 May I accept costs of prior research as cost sharing?
37.550 May I accept intellectual property as cost sharing?
37.555 How do I value a recipient's other contributions?

Fixed-Support or Expenditure-Based Approach

37.560 Must I be able to estimate project expenditures precisely in order to justify use of a fixed-support TIA?
37.565 May I use a hybrid instrument that provides fixed support for only a portion of a project?

Accounting, Payments, and Recovery of Funds

37.570 What must I do if a CAS-covered participant accounts differently for its own and the Federal Government shares of project costs?
37.575 What are my responsibilities for determining milestone payment amounts?
37.580 What is recovery of funds and when should I consider including it in my TIA?

Subpart F—Award Terms Affecting Participants' Financial, Property, and Purchasing Systems

37.600 Which administrative matters are covered in this subpart?
37.605 What is the general policy on participants' financial, property, and purchasing systems?
37.610 Must I tell participants what requirements they are to flow down for subawardees' systems?

Financial Matters

37.615 What standards do I include for financial systems of for-profit firms?
37.620 What financial management standards do I include for nonprofit participants?
37.625 What cost principles or standards do I require for for-profit participants?
37.630 Must I require a for-profit firm to use Federally approved indirect cost rates?
37.635 What cost principles do I require a nonprofit participant to use?
37.640 Must I include a provision for audits of for-profit participants?
37.645 Must I require periodic system audits, as well as award-specific audits, of for-profit participants?
37.650 Who must I identify as the auditor for a for-profit participant?
37.655 Must I specify the frequency of IPAs' periodic audits of for-profit participants?
37.660 What else must I specify concerning audits of for-profit participants by IPAs?
37.665 Must I require nonprofit participants to have periodic systems audits?
37.670 Must I require participants to flow down audit requirements to subrecipients?
37.675 Must I report when I enter into a TIA allowing a for-profit firm to use an IPA?
37.680 Must I require a participant to report when it enters into a subaward allowing a for-profit firm to use an IPA?

Property

37.685 May I allow for-profit firms to purchase real property and equipment with project funds?
37.690 How are nonprofit participants to manage real property and equipment?
37.695 What are the requirements for Federally owned property?
37.700 What are the requirements for supplies?

Purchasing

37.705 What standards do I include for purchasing systems of for-profit firms?
37.710 What standards do I include for purchasing systems of nonprofit organizations?

Subpart G—Award Terms Related to Other Administrative Matters

37.800 Which administrative matters are covered in this subpart?

Payments

37.805 If I am awarding a TIA, what payment methods may I specify?
37.810 What should my TIA's provisions specify for the method and frequency of recipients' payment requests?
37.815 May the Government withhold payments?
37.820 Must I require a recipient to return interest on advance payments?

Revision of Budget and Program Plans

37.825 Must I require the recipient to obtain prior approval from the Government for changes in plans?
37.830 May I let a recipient charge pre-award costs to the agreement?

Program Income

37.835 What requirements do I include for program income?

Intellectual Property

37.840 What general approach should I take in negotiating data and patent rights?
37.845 What data rights should I obtain?
37.850 Should I require recipients to mark data?
37.855 How should I handle protected data?
37.860 What rights should I obtain for inventions?
37.865 Should my patent provision include march-in rights?
37.870 Should I require recipients to mark documents related to inventions?
37.875 Should my TIA include a provision concerning foreign access to technology?

Financial and Programmatic Reporting

37.880 What requirements must I include for periodic reports on program and business status?
37.885 May I require updated program plans?
37.890 Must I require a final performance report?
37.895 How is the final performance report to be sent to the Defense Technical Information Center?
37.900 May I tell a participant that information in financial and programmatic reports will not be publicly disclosed?
37.905 Must I make receipt of the final performance report a condition for final payment?

Records Retention and Access Requirements

37.910 How long must I require participants to keep records related to the TIA?
37.915 What requirement for access to a for-profit participant's records do I include in a TIA?
37.920 What requirement for access to a nonprofit participant's records do I include in a TIA?

Termination and Enforcement

37.925 What requirements do I include for termination and enforcement?

Subpart H—Executing the Award

37.1000 What are my responsibilities at the time of award?

The Award Document

37.1005 What are my general responsibilities concerning the award document?
37.1010 What substantive issues should my award document address?
37.1015 How do I decide who must sign the TIA if the recipient is an unincorporated consortium?

Reporting Information About the Award

37.1020 What must I document in my award file?
37.1025 Must I report information to the Defense Assistance Awards Data System?
37.1030 What information must I report to the Defense Technical Information Center?
37.1035 How do I know if my TIA uses the 10 U.S.C. 2371 authority and I must report additional data under § 37.1030(b)?
§ 37.1040 When and how do I report information required by § 37.1035?

Distributing Copies of the Award Document

37.1045 To whom must I send copies of the award document?

Subpart I—Post-Award Administration

37.1100 What are my responsibilities generally as an administrative agreements officer for a TIA?
37.1105 What additional duties do I have as the administrator of a TIA with advance payments or payable milestones?
37.1110 What other responsibilities related to payments do I have?
37.1115 What are my responsibilities related to participants' single audits?
37.1120 When and how may I request an award-specific audit?

Subpart J—Definitions of Terms Used in This Part

37.1205 Advance.
37.1210 Advanced research.
37.1215 Agreements officer.
37.1220 Applied research.
37.1225 Articles of collaboration.
37.1230 Assistance.
37.1235 Award-specific audit.
37.1240 Basic research.
37.1245 Cash contributions.
37.1250 Commercial firm.
37.1255 Consortium.
37.1260 Cooperative agreement.
37.1265 Cost sharing.
37.1270 Data.
37.1275 DoD Component.
37.1280 Equipment.
37.1285 Expenditure-based award.
37.1290 Expenditures or outlays.
37.1295 Grant.
37.1300 In-kind contributions.
37.1305 Institution of higher education.
37.1310 Intellectual property.
37.1315 Nonprofit organization.
37.1320 Participant.
37.1325 Periodic audit.
37.1330 Procurement contract.
37.1335 Program income.
37.1340 Program official.
37.1345 Property.
37.1350 Real property.
37.1355 Recipient.
37.1360 Research.
37.1365 Supplies.
37.1370 Termination.
37.1375 Technology investment agreements.
Appendix A to Part 37—What is the Civil-Military Integration Policy that is the Basis for Technology Investment Agreements?
Appendix B to Part 37—What Type of Instrument is a TIA and What Statutory Authorities Does it Use?
Appendix C to Part 37What is the Desired Coverage for Periodic Audits of For-Profit Participants to be Audited by IPAs?
Appendix D to Part 37—What Common National Policy Requirements May Apply and Need to Be Included in TIAs?
Appendix E to Part 37—What Provisions May a Participant Need to Include when Purchasing Goods or Services Under a TIA?

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart A-General

§ 37.100 What does this part do?

This part establishes uniform policies and procedures for the DoD Components' award and administration of technology investment agreements (TIAs).

§ 37.105 Does this part cover all types of instruments that 10 U.S.C. 2371 authorizes?

No, this part covers only TIAs, some of which use the authority of 10 U.S.C. 2371 (see appendix B to this part). This part does not cover assistance instruments other than TIAs that use the authority of 10 U.S.C. 2371. It also does not cover acquisition agreements for prototype projects that use 10 U.S.C. 2371 authority augmented by the authority in section 845 of Public Law 103–160, as amended.

§ 37.110 What type of instruments are technology investment agreements (TIAs)?

TIAs are assistance instruments used to stimulate or support research. As discussed in appendix B to this part, a TIA may be either a kind of cooperative agreement or a type of assistance transaction other than a grant or cooperative agreement.

§ 37.115 For what purposes are TIAs used?

The ultimate goal for using TIAs, like other assistance instruments used in defense research programs, is to foster the best technologies for future defense needs. TIAs differ from and complement other assistance instruments available to agreements officers, in that TIAs address the goal by fostering civil-military integration (see appendix A to this part). TIAs therefore are designed to:

(a) Reduce barriers to commercial firms' participation in defense research, to give the Department of Defense (DoD) access to the broadest possible technology and industrial base.

(b) Promote new relationships among performers in both the defense and commercial sectors of that technology and industrial base.

(c) Stimulate performers to develop, use, and disseminate improved practices.

§ 37.120 Can my organization award or administer TIAs?

Your office may award or administer TIAs if it has a delegation of the authorities in 10 U.S.C. 2371, as well as 10 U.S.C. 2358. If your office is in a Military Department, it must have a delegation of the authority of the Secretary of that Military Department under those statutes. If your office is in a Defense Agency, it must have a delegation of the authority of the Secretary of Defense under 10 U.S.C. 2358 and 2371. Your office needs those authorities to be able to:

(a) Enter into cooperative agreements to stimulate or support research, using the authority of 10 U.S.C. 2358, as well as assistance transactions other than grants or cooperative agreements, using the authority of 10 U.S.C. 2371. The reason that both authorities are needed is that a TIA, depending upon its patent rights provision (see appendix B to this part), may be either a cooperative agreement or a type of assistance transaction other than a grant or cooperative agreement.

(b) Recover funds from a recipient and reuse the funds for program purposes, as authorized by 10 U.S.C. 2371 and described in § 37.580.

(c) Exempt certain information received from proposers from disclosure under the Freedom of Information Act, as authorized by 10 U.S.C. 2371 and described in § 37.420.

§ 37.125 May I award or administer TIAs if I am authorized to award or administer other assistance instruments?

(a) You must have specific authorization to award or administer TIAs. Being authorized to award or administer grants and cooperative agreements is not sufficient; a grants officer is an agreements officer only if the statement of appointment also authorizes the award or administration of TIAs.

(b) You receive that authorization in the same way that you receive authority to award other assistance instruments, as described in 32 CFR 21.215, 21.225, and 21.230.

§ 37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?

(a) TIAs are explicitly covered in this part and part 21 of the DoD Grant and Agreement Regulations (DoDGARs). Part 21 (32 CFR part 21) addresses deviation procedures and other general matters that relate to the DoDGARs, to DoD Components' authorities and responsibilities for assistance instruments, and to requirements for reporting information about assistance awards.

(b) Two additional parts of the DoDGARs apply to TIAs, although they do not mention TIAs explicitly. They are:

(1) Part 25 (32 CFR part 25), on debarment, suspension, and drug-free workplace requirements, which applies because it covers nonprocurement instruments in general; and

(2) Part 28 (32 CFR part 28), on lobbying restrictions, which applies by law (31 U.S.C. 1352) to TIAs that are cooperative agreements and as a matter of DoD policy to all other TIAs.

(c) Portions of four other DoDGARs parts apply to TIAs only as cited by reference in this part. Those parts of the DoDGARs are parts 22, 32, 33, and 34 (32 CFR parts 22, 32, 33, and 34).

Subpart B—Appropriate Use of Technology Investment Agreements

§ 37.200 What are my responsibilities as an agreements officer for ensuring the appropriate use of TIAs?

You must ensure that you use TIAs only in appropriate situations. To do so, you must conclude that the use of a TIA is justified based on:

(a) The nature of the project, as discussed in § 37.205;

(b) The type of recipient, addressed in § 37.210;

(c) The recipient's commitment and cost sharing, as described in § 37.215;

(d) The degree of involvement of the Government program official, as discussed in § 37.220; and

(e) Your judgment that the use of a TIA could benefit defense research objectives in ways that likely would not happen if another type of assistance instrument were used. Your answers to the four questions in § 37.225 should be the basis for your judgment.

§ 37.205 What judgments must I make about the nature of the project?

You must:

(a) Conclude that the principal purpose of the project is stimulation or support of research (i.e., assistance), rather than acquiring goods or services for the benefit of the Government (i.e., acquisition);

(b) Decide that the basic, applied, or advanced research project is relevant to the policy objective of civil-military integration (see appendix A of this part); and

(c) Ensure that, to the maximum extent practicable, any TIA that uses the authority of 10 U.S.C. 2371 (see appendix B of this part) does not support research that duplicates other research being conducted under existing programs carried out by the Department of Defense. This is a statutory requirement of 10 U.S.C. 2371.

(d) When your TIA is a type of assistance transaction other than a grant or cooperative agreement, satisfy the condition in 10 U.S.C. 2371 to judge that the use of a standard grant or cooperative agreement for the research project is not feasible or appropriate. As discussed in appendix B to this part:

(1) This situation arises if your TIA includes a patent provision that is less restrictive than is possible under the Bayh-Dole statute (because the patent provision is what distinguishes a TIA that is a cooperative agreement from a TIA that is an assistance transaction other than a grant or cooperative agreement).

(2) You satisfy the requirement to judge that a standard cooperative agreement is not feasible or appropriate when you judge that execution of the research project warrants a less restrictive patent provision than is possible under Bayh-Dole.

§ 37.210 To what types of recipients may I award a TIA?

(a) As a matter of DoD policy, you may award a TIA only when one or more for-profit firms are to be involved either in the:

(1) Performance of the research project; or

(2) The commercial application of the research results. In that case, you must determine that the nonprofit performer has at least a tentative agreement with specific for-profit partners who plan on being involved when there are results to transition. You should review the agreement between the nonprofit and for-profit partners, because the for-profit partners' involvement is the basis for using a TIA rather than another type of assistance instrument.

(b) Consistent with the goals of civil-military integration, TIAs are most appropriate when one or more commercial firms (as defined at § 37.1250) are to be involved in the project.

(c) You are encouraged to make awards to consortia (a consortium may include one or more for-profit firms, as well as State or local government agencies, institutions of higher education, or other nonprofit organizations). The reasons are that:

(1) When multiple performers are participating as a consortium, they are more equal partners in the research performance than usually is the case with a prime recipient and subawards. All of them therefore are more likely to be directly involved in developing and revising plans for the research effort, reviewing technical progress, and overseeing financial and other business matters. That feature makes consortia well suited to building new relationships among performers in the defense and commercial sectors of the technology and industrial base, a principal objective for the use of TIAs.

(2) In addition, interactions among the participants within a consortium potentially provide a self-governance mechanism. The potential for additional self-governance is particularly good when a consortium includes multiple for-profit participants that normally are competitors within an industry.

(d) TIAs also may be used for carrying out research performed by single firms or multiple performers in prime award-subaward relationships. In awarding TIAs in those cases, however, you should consider providing for greater involvement of the program official or a way to increase self-governance (e.g., a prime award with multiple subawards arranged so as to give the subrecipients more insight into and authority and responsibility for programmatic and business aspects of the overall project than they usually have).

§ 37.215 What must I conclude about the recipient's commitment and cost sharing?

(a) You should judge that the recipient has a strong commitment to and self-interest in the success of the project. You should find evidence of that commitment and interest in the proposal, in the recipient's management plan, or through other means. A recipient's self-interest might be driven, for example, by a research project's potential for fostering technology to be incorporated into products and processes for the commercial marketplace.

(b) You must seek cost sharing. The purpose of cost share is to ensure that the recipient incurs real risk that gives it a vested interest in the project's success; the willingness to commit to meaningful cost sharing therefore is one good indicator of a recipient's self-interest. The requirements are that:

(1) To the maximum extent practicable, the non-Federal parties carrying out a research project under a TIA are to provide at least half of the

costs of the project. Obtaining this cost sharing, to the maximum extent practicable, is a statutory condition for any TIA under the authority of 10 U.S.C. 2371, and is a matter of DoD policy for all other TIAs.

(2) The parties must provide the cost sharing from non-Federal resources that are available to them unless there is specific authority to use other Federal resources for that purpose (see § 37.530(f)).

(c) You may consider whether cost sharing is impracticable in a given case, unless there is a non-waivable, statutory requirement for cost sharing that applies to the particular program under which the award is to be made. Before deciding that cost sharing is impracticable, you should carefully consider whether there are other factors that demonstrate the recipient's self-interest in the success of the current project.

§ 37.220 How involved should the Government program official be in the project?

(a) TIAs are used to carry out cooperative relationships between the Federal Government and the recipient, which requires a greater level of involvement of the Government program official in the execution of the research than the usual oversight of a research grant or procurement contract. For example, program officials will participate in recipients' periodic reviews of research progress and will be substantially involved with the recipients in the resulting revisions of plans for future effort. That increased programmatic involvement before and during program execution with a TIA can reduce the need for some Federal financial requirements that are problematic for commercial firms.

(b) Some aspects of their involvement require program officials to have greater knowledge about and participation in business matters that traditionally would be your exclusive responsibility as the agreements officer. TIAs therefore also require closer cooperation between program officials and you, as the one who decides business matters.

§ 37.225 What judgment must I make about the benefits of using a TIA?

Before deciding that a TIA is appropriate, you also must judge that using a TIA could benefit defense research objectives in ways that likely would not happen if another type of assistance instrument were used (e.g., a cooperative agreement subject to all of the requirements of 32 CFR part 34). You, in conjunction with Government program officials, must consider the questions in paragraphs (a) through (d) of this section, to help identify the benefits that may justify using a TIA and reducing some of the usual requirements. In accordance with § 37.1030, you will report your answers to these questions to help the DoD measure the Department-wide benefits of using TIAs and meet requirements to report to the Congress. Note that you must give full concise answers only to questions that relate to the benefits that you perceive for using the TIA, rather than another type of funding instrument, for the particular research project. A simple ''no'' or ''not applicable'' is a sufficient response for other questions. The questions are:

(a) Will the use of a TIA permit the involvement in the research of any commercial firms or business units of firms that would not otherwise participate in the project? If so:

(1) What are the expected benefits of those firms' or divisions' participation (e.g., is there a specific technology that could be better, more readily available, or less expensive)?

(2) Why would they not participate if an instrument other than a TIA were used? You should identify specific provisions of the TIA or features of the TIA award process that enable their participation.

(b) Will the use of a TIA allow the creation of new relationships among participants at the prime or subtier levels, among business units of the same firm, or between non-Federal participants and the Federal Government that will help the DoD get better technology in the future? If so:

(1) Why do these new relationships have the potential for helping the DoD get technology in the future that is better, more affordable, or more readily available?

(2) Are there provisions of the TIA or features of the TIA award process that enable these relationships to form? If so, you should be able to identify specifically what they are. If not, you should be able to explain specifically why you think that the relationships could not be created if an assistance instrument other than a TIA were used.

(c) Will the use of a TIA allow firms or business units of firms that traditionally accept Government awards to use new business practices in the execution of the research that will help us get better technology, help us get new technology more quickly or less expensively, or facilitate partnering with commercial firms? If so:

(1) What specific benefits will the DoD potentially get from the use of these new practices? You should be able to explain specifically why you foresee a potential for those benefits.

(2) Are there provisions of the TIA or features of the TIA award process that enable the use of the new practices? If so, you should be able to identify those provisions or features and explain why you think that the practices could not be used if the award were made using an assistance instrument other than a TIA.

(d) Are there any other benefits of the use of a TIA that could help the Department of Defense better meet its objectives in carrying out the research project? If so, you should be able to identify specifically what they are, how they can help meet defense objectives, what features of the TIA or award process enable the DoD to realize them, and why the benefits likely would not be realized if an assistance instrument other than a TIA were used.

§ 37.230 May I use a TIA if a participant is to receive fee or profit?

In accordance with 32 CFR 22.205(b), you may not use a TIA if any participant is to receive fee or profit. Note that this policy extends to all performers of the research project carried out under the TIA, including any subawards for substantive program performance, but it does not preclude participants' or subrecipients' payment of reasonable fee or profit when making purchases from suppliers of goods (e.g., supplies and equipment) or services needed to carry out the research.

Subpart C—Expenditure-Based and Fixed-Support Technology Investment Agreements

§ 37.300 What is the difference between an expenditure-based and fixed-support TIA?

The fundamental difference between an expenditure-based and fixed-support TIA is that:

(a) For an expenditure-based TIA, the amounts of interim payments or the total amount ultimately paid to the recipient are based on the amounts the recipient expends on project costs. If a recipient completes the project specified at the time of award before it expends all of the agreed-upon Federal funding and recipient cost sharing, the Federal Government may recover its share of the unexpended balance of funds or, by mutual agreement with the recipient, amend the agreement to expand the scope of the research project. An expenditure-based TIA therefore is analogous to a cost-type procurement contract or grant.

(b) For a fixed-support TIA, the amount of assistance established at the time of award is not meant to be adjusted later if the research project is carried out to completion. In that sense, a fixed-support TIA is somewhat

analogous to a fixed-price procurement contract (although ''price,'' a concept appropriate to a procurement contract for buying a good or service, is not appropriate for a TIA or other assistance instrument for stimulation or support of a project).

§ 37.305 When may I use a fixed-support TIA?

You may use a fixed-support TIA if:

(a) The agreement is to support or stimulate research with outcomes that are well defined, observable, and verifiable;

(b) You can reasonably estimate the resources required to achieve those outcomes well enough to ensure the desired level of cost sharing (see example in § 37.560(b)); and

(c) Your TIA does not require a specific amount or percentage of recipient cost sharing. In cases where the agreement does require a specific amount or percentage of cost sharing, a fixed-support TIA is not practicable because the agreement has to specify cost principles or standards for costs that may be charged to the project; require the recipient to track the costs of the project; and provide access for audit to allow verification of the recipient's compliance with the mandatory cost sharing. You therefore must use an expenditure-based TIA if you:

(1) Have a non-waivable requirement (e.g., in statute) for a specific amount or percentage of recipient cost sharing; or

(2) Have otherwise elected to include in the TIA a requirement for a specific amount or percentage of cost sharing.

§ 37.310 When would I use an expenditure-based TIA?

In general, you must use an expenditure-based TIA under conditions other than those described in § 37.305. Reasons for any exceptions to this general rule must be documented in the award file and must be consistent with the policy in § 37.230 that precludes payment of fee or profit to participants.

§ 37.315 What are the advantages of using a fixed-support TIA?

In situations where the use of fixed-support TIAs is permissible (see §§ 37.305 and 37.310), their use may encourage some commercial firms' participation in the research. With a fixed-support TIA, you can eliminate or reduce some post-award requirements that sometimes are cited as disincentives for those firms to participate. For example, a fixed-support TIA need not:

(a) Specify minimum standards for the recipient's financial management system.

(b) Specify cost principles or standards stating the types of costs the recipient may charge to the project.

(c) Provide for financial audits by Federal auditors or independent public accountants of the recipient's books and records.

(d) Set minimum standards for the recipient's purchasing system.

(e) Require the recipient to prepare financial reports for submission to the Federal Government.

Subpart D—Competition Phase

§ 37.400 Must I use competitive procedures to award TIAs?

DoD policy is to award TIAs using merit-based, competitive procedures, as described in 32 CFR 22.315:

(a) In every case where required by statute; and

(b) To the maximum extent practicable in all other cases.

§ 37.405 What must my announcement or solicitation include?

Your announcement, to be considered as part of a competitive procedure, must include the basic information described in 32 CFR 22.315(a). Additional elements for you to consider in the case of a program that may use TIAs are described in §§ 37.410 through 37.420.

§ 37.410 Should my announcement or solicitation state that TIAs may be awarded?

Yes, once you consider the factors described in subpart B of this part and decide that TIAs are among the types of instruments that you may award pursuant to a solicitation, it is important for you to state that fact in the solicitation. You also should state that TIAs are more flexible than traditional Government funding instruments and that provisions are negotiable in areas such as audits and intellectual property rights that may cause concern for commercial firms. Doing so should increase the likelihood that commercial firms will be willing to submit proposals.

§ 37.415 Should I address cost sharing in the announcement or solicitation?

To help ensure a competitive process that is fair and equitable to all potential proposers, you should state clearly in the solicitation:

(a) The types of cost sharing that are acceptable;

(b) How any in-kind contributions will be valued, in accordance with §§ 37.530 through 37.555; and

(c) Whether you will give any consideration to alternative approaches a proposer may offer to demonstrate its strong commitment to and self-interest in the project's success, in accordance with § 37.215.

§ 37.420 Should I tell proposers that we will not disclose information that they submit?

Your solicitation should tell potential proposers that:

(a) For all TIAs, information described in paragraph (b) of this section is exempt from disclosure requirements of the Freedom of Information Act (FOIA)(codified at 5 U.S.C. 552) for a period of five years after the date on which the DoD Component receives the information from them.

(b) As provided in 10 U.S.C. 2371, disclosure is not required, and may not be compelled, under FOIA during that period if:

(1) A proposer submits the information in a competitive or noncompetitive process that could result in their receiving a cooperative agreement for basic, applied, or advanced research under the authority of 10 U.S.C. 2358 or any other type of transaction authorized by 10 U.S.C. 2371 (as explained in appendix B to this part, that includes all TIAs); and

(2) The type of information is among the following types that are exempt:

(i) Proposals, proposal abstracts, and supporting documents; and

(ii) Business plans and technical information submitted on a confidential basis.

(c) If proposers desire to protect business plans and technical information for five years from FOIA disclosure requirements, they must mark them with a legend identifying them as documents submitted on a confidential basis.

Subpart E—Pre-Award Business Evaluation

§ 37.500 What must my pre-award business evaluation address?

(a) You must determine the qualification of the recipient, as described in §§ 37.510 and 37.515.

(b) As the business expert working with the program official, you also must address the financial aspects of the proposed agreement. You must:

(1) Determine that the total amount of funding for the proposed effort is reasonable, as addressed in § 37.520.

(2) Assess the value and determine the reasonableness of the recipient's proposed cost sharing contribution, as discussed in §§ 37.525 through 37.555.

(3) If you are contemplating the use of a fixed-support rather than expenditure-based TIA, ensure that its use is

justified, as explained in §§ 37.560 and 37.565.

(4) Address issues of inconsistent cost accounting by traditional Government contractors, should they arise, as noted in § 37.570.

(5) Determine amounts for milestone payments, if you use them, as discussed in § 37.575.

§ 37.505 What resources are available to assist me during the pre-award business evaluation?

Administrative agreements officers of the Defense Contract Management Agency and the Office of Naval Research can share lessons learned from administering other TIAs. Program officials can be a source of information when you are determining the reasonableness of proposed funding (e.g., on labor rates, as discussed in § 37.520) or establishing observable and verifiable technical milestones for payments (see § 37.575). Auditors at the Defense Contract Audit Agency can act in an advisory capacity to help you determine the reasonableness of proposed amounts, including values of in-kind contributions toward cost sharing.

Recipient Qualification

§ 37.510 What are my responsibilities for determining that a recipient is qualified?

Prior to award of a TIA, your responsibilities for determining that the recipient is qualified are the same as those of a grants officer who is awarding a grant or cooperative agreement. Those responsibilities are described in subpart D of 32 CFR part 22. When the recipient is a consortium that is not formally incorporated, you have the additional responsibility described in § 37.515.

§ 37.515 Must I do anything additional to determine the qualification of a consortium?

(a) When the prospective recipient of a TIA is a consortium that is not formally incorporated, your determination that the recipient meets the standard at 32 CFR 22.415(a) requires that you, in consultation with legal counsel, review the management plan in the consortium's collaboration agreement. The purpose of your review is to ensure that the management plan is sound and that it adequately addresses the elements necessary for an effective working relationship among the consortium members. An effective working relationship is essential to increase the research project's chances of success.

(b) The collaboration agreement, commonly referred to as the articles of collaboration, is the document that sets out the rights and responsibilities of each consortium member. It binds the individual consortium members together, whereas the TIA binds the Government and the consortium as a group (or the Government and a consortium member on behalf of the consortium, as explained in § 37.1015). The document should discuss, among other things, the consortium's:

(1) Management structure.

(2) Method of making payments to consortium members.

(3) Means of ensuring and overseeing members' efforts on the project.

(4) Provisions for members' cost sharing contributions.

(5) Provisions for ownership and rights in intellectual property developed previously or under the agreement.

Total Funding

§ 37.520 What is my responsibility for determining that the total project funding is reasonable?

In cooperation with the program official, you must assess the reasonableness of the total estimated budget to perform the research that will be supported by the agreement. Additional guidance follows for:

(a) *Labor.* Much of the budget likely will involve direct labor and associated indirect costs, which may be represented together as a ''loaded'' labor rate. The program official is an essential advisor on reasonableness of the overall level of effort and its composition by labor category. You also may rely on your experience with other awards as the basis for determining reasonableness. If you have any unresolved questions, two of the ways that you might find helpful in establishing reasonableness are to:

(1) Consult the administrative agreements officers or auditors identified in § 37.505.

(2) Compare loaded labor rates of for-profit firms that do not have expenditure-based Federal procurement contracts or assistance awards with a standard or average for the particular industry. Note that the program official may have knowledge about customary levels of direct labor charges in the particular industry that is involved. You may be able to compare associated indirect charges with Government-approved indirect cost rates that exist for many nonprofit and for-profit organizations that have Federal procurement contracts or assistance awards (note the requirement in § 37.630 for a for-profit participant to use Federally approved provisional indirect cost rates, if it has them).

(b) *Real property and equipment.* In almost all cases, the project costs may include only depreciation or use charges for real property and equipment of for-profit participants, in accordance with § 37.685. Remember that the budget for an expenditure-based TIA may not include depreciation of a participant's property as a direct cost of the project if that participant's practice is to charge the depreciation of that type of property as an indirect cost, as many organizations do.

Cost Sharing

§ 37.525 What is my responsibility for determining the value and reasonableness of the recipient's cost sharing contribution?

You must:

(a) Determine that the recipient's cost sharing contributions meet the criteria for cost sharing and determine values for them, in accordance with §§ 37.530 through 37.555. In doing so, you must:

(1) Ensure that there are affirmative statements from any third parties identified as sources of cash contributions.

(2) Include in the award file an evaluation that documents how you determined the values of the recipient's contributions to the funding of the project.

(b) Judge that the recipient's cost sharing contribution, as a percentage of the total budget, is reasonable. To the maximum extent practicable, the recipient must provide at least half of the costs of the project, in accordance with § 37.215.

§ 37.530 What criteria do I use in deciding whether to accept a recipient's cost sharing?

You may accept any cash or in-kind contributions that meet all of the following criteria:

(a) In your judgment, they represent meaningful cost sharing that demonstrates the recipient's commitment to the success of the research project. Cash contributions clearly demonstrate commitment and they are strongly preferred over in-kind contributions.

(b) They are necessary and reasonable for accomplishment of the research project's objectives.

(c) They are costs that may be charged to the project under § 37.625 and § 37.635, as applicable to the participant making the contribution.

(d) They are verifiable from the recipient's records.

(e) They are not included as cost sharing contributions for any other Federal award.

(f) They are not paid by the Federal Government under another award, except:

(1) Costs that are authorized by Federal statute to be used for cost sharing; or

(2) Independent research and development (IR&D) costs, as described at 32 CFR 34.13(a)(5)(ii), that meet all of the criteria in paragraphs (a) through (e) of this section. IR&D is acceptable as cost sharing, even though it may be reimbursed by the Government through other awards. It is standard business practice for all for-profit firms, including commercial firms, to recover their research and development (R&D) costs (which for Federal procurement contracts is recovered as IR&D) through prices charged to their customers. Thus, the cost principles at 48 CFR part 31 allow a for-profit firm that has expenditure-based, Federal procurement contracts to recover through those procurement contracts the allocable portion of its R&D costs associated with a technology investment agreement.

§ 37.535 How do I value cost sharing related to real property or equipment?

You rarely should accept values for cost sharing contributions of real property or equipment that are in excess of depreciation or reasonable use charges, as discussed in § 37.685 for for-profit participants. You may accept the full value of a donated capital asset if the real property or equipment is to be dedicated to the project and you expect that it will have a fair market value that is less than $5,000 at the project's end. In those cases, you should value the donation at the lesser of:

(a) The value of the property as shown in the recipient's accounting records (i.e., purchase price less accumulated depreciation); or

(b) The current fair market value. You may accept the use of any reasonable basis for determining the fair market value of the property. If there is a justification to do so, you may accept the current fair market value even if it exceeds the value in the recipient's records.

§ 37.540 May I accept fully depreciated real property or equipment as cost sharing?

You should limit the value of any contribution of a fully depreciated asset to a reasonable use charge. In determining what is reasonable, you must consider:

(a) The original cost of the asset;

(b) Its estimated remaining useful life at the time of your negotiations;

(c) The effect of any increased maintenance charges or decreased performance due to age; and

(d) The amount of depreciation that the participant previously charged to Federal awards.

§ 37.545 May I accept costs of prior research as cost sharing?

No, you may not count any participant's costs of prior research as a cost sharing contribution. Only the additional resources that the recipient will provide to carry out the current project (which may include pre-award costs for the current project, as described in § 37.830) are to be counted.

§ 37.550 May I accept intellectual property as cost sharing?

(a) In most instances, you should not count costs of patents and other intellectual property (e.g., copyrighted material, including software) as cost sharing, because:

(1) It is difficult to assign values to these intangible contributions;

(2) Their value usually is a manifestation of prior research costs, which are not allowed as cost share under § 37.545; and

(3) Contributions of intellectual property rights generally do not represent the same cost of lost opportunity to a recipient as contributions of cash or tangible assets. The purpose of cost share is to ensure that the recipient incurs real risk that gives it a vested interest in the project's success.

(b) You may include costs associated with intellectual property if the costs are based on sound estimates of market value of the contribution. For example, a for-profit firm may offer the use of commercially available software for which there is an established license fee for use of the product. The costs of the development of the software would not be a reasonable basis for valuing its use.

§ 37.555 How do I value a recipient's other contributions?

For types of participant contributions other than those addressed in §§ 37.535 through 37.550, the general rule is that you are to value each contribution consistently with the cost principles or standards in § 37.625 and § 37.635 that apply to the participant making the contribution. When valuing services and property donated by parties other than the participants, you may use as guidance the provisions of 32 CFR 34.13(b)(2) through (5).

Fixed-Support or Expenditure-Based Approach

§ 37.560 Must I be able to estimate project expenditures precisely in order to justify use of a fixed-support TIA?

(a) To use a fixed-support TIA, rather than an expenditure-based TIA, you must have confidence in your estimate of the expenditures required to achieve well-defined outcomes. Therefore, you must work carefully with program officials to select outcomes that, when the recipient achieves them, are reliable indicators of the amount of effort the recipient expended. However, your estimate of the required expenditures need not be a precise dollar amount, as illustrated by the example in paragraph (b) of this section, if:

(1) The recipient is contributing a substantial share of the costs of achieving the outcomes, which must meet the criteria in § 37.305(a); and

(2) You are confident that the costs of achieving the outcomes will be at least a minimum amount that you can specify and the recipient is willing to accept the possibility that its cost sharing percentage ultimately will be higher if the costs exceed that minimum amount.

(b) To illustrate the approach, consider a project for which you are confident that the recipient will have to expend at least $800,000 to achieve the specified outcomes. You must determine, in conjunction with program officials, the minimum level of recipient cost sharing that you want to negotiate, based on the circumstances, to demonstrate the recipient's commitment to the success of the project. For purposes of this illustration, let that minimum recipient cost sharing be 40% of the total project costs. In that case, the Federal share should be no more than 60% and you could set a fixed level of Federal support at $480,000 (60% of $800,000). With that fixed level of Federal support, the recipient would be responsible for the balance of the costs needed to complete the project.

§ 37.565 May I use a hybrid instrument that provides fixed support for only a portion of a project?

Yes, for a research project that is to be carried out by a number of participants, you may award a TIA that provides for some participants to perform under fixed-support arrangements and others to perform under expenditure-based arrangements. This approach may be useful, for example, if a commercial firm that is a participant will not accept an agreement with all of the post-award requirements of an expenditure-based award. Before using a fixed-support arrangement for that firm's portion of the project, you must judge that it meets the criteria in § 37.305.

Accounting, Payments, and Recovery of Funds

§ 37.570 What must I do if a CAS-covered participant accounts differently for its own and the Federal Government shares of project costs?

(a) If a participant has Federal procurement contracts that are subject

to the Cost Accounting Standards (CAS) in part 30 of the Federal Acquisition Regulation (FAR) and the associated FAR Appendix (48 CFR part 30 and 48 CFR 9903.201–1, respectively), you must alert the cognizant administrative contracting officer (ACO) for the participant's procurement contracts if you learn that the participant plans to account for:

(1) Its own share of project costs under the TIA as direct costs and the Federal Government's share as indirect costs; or

(2) Its own share as indirect costs and the Federal Government's share as direct costs. This may arise, for example, if a for-profit firm (or a nonprofit organization that is identified in OMB Circular A–122[1] as being subject to the FAR cost principles in 48 CFR parts 31 and 231) proposes to charge its share of project costs as independent research and development costs, which are indirect costs under the FAR cost principles.

(b) The reason for alerting the ACO is that the inconsistent (direct versus indirect) charging of the two shares could cause a noncompliance with Cost Accounting Standard (CAS) 402. Noncompliance with CAS 402 is a potential issue only for a participant that has CAS-covered Federal procurement contracts (note that CAS requirements do not apply to a for-profit participant's TIAs).

(c) For for-profit participants with CAS-covered procurement contracts, the cognizant ACO in most cases will be an individual within the Defense Contract Management Agency (DCMA). You can identify a cognizant ACO at the DCMA by querying the contract administration team locator that matches contractors with their ACOs (currently on the World Wide Web at *http://alerts.dcmdw.dcma.mil/support,* a site that also can be accessed through the DCMA home page at *http://www.dcma.mil).*

§ 37.575 What are my responsibilities for determining milestone payment amounts?

(a) If you select the milestone payment method (see § 37.805), you must assess the reasonableness of the estimated budget for reaching each milestone. This assessment enables you to set the amount of each milestone payment to approximate the Federal share of the anticipated resource needs for carrying out that phase of the research effort.

(b) The Federal share at each milestone need not be the same as the Federal share of the total project. For example, you might deliberately set payment amounts with a larger Federal share for early milestones if a project involves a start-up company with limited resources.

(c) For an expenditure-based TIA, if you have minimum percentages that you want the recipient's cost sharing to be at the milestones, you should indicate those percentages in the agreement or in separate instructions to the post-award administrative agreements officer. That will help the administrative agreements officer decide when a project's expenditures have fallen too far below the original projections, requiring adjustments of future milestone payment amounts (see § 37.1105(c)).

(d) For fixed-support TIAs, the milestone payments should be associated with the well-defined, observable and verifiable technical outcomes (e.g., demonstrations, tests, or data analysis) that you establish for the project in accordance with §§ 37.305(a) and 37.560(a).

§ 37.580 What is recovery of funds and when should I consider including it in my TIA?

(a) Recovery of funds refers to the use of the authority in 10 U.S.C. 2371 to include a provision in certain types of agreements, including TIAs, that require a recipient to make payments to the Department of Defense or another Federal agency as a condition of the agreement. Recovery of funds is a good tool in the right circumstances, at the discretion of the agreements officer and the awarding organization, but its purpose is not to augment program budgets. It may be used to recover funds provided to a recipient through a TIA or another Federal procurement or assistance instrument, and the recovery should not exceed the amounts provided. Recovery of funds is distinct from program income, as described in § 37.835.

(b) In accordance with 10 U.S.C. 2371, as implemented by policy guidance from the Office of the Under Secretary of Defense (Comptroller), the payment amounts may be credited to an existing account of the Department of Defense and used for the same program purposes as other funds in that account.

(c) Before you use the authority to include a provision for recovery of funds, note that 10 U.S.C. 2371 requires you to judge that it would not be feasible or appropriate to use for the research project a standard grant or cooperative agreement (in this instance, a ''standard cooperative agreement'' means a cooperative agreement without a provision for recovery of funds). You satisfy that 10 U.S.C. 2371 requirement when you judge that execution of the research project warrants inclusion of a provision for recovery of funds.

Subpart F—Award Terms Affecting Participants' Financial, Property, and Purchasing Systems

§ 37.600 Which administrative matters are covered in this subpart?

This subpart addresses ''systemic'' administrative matters that place requirements on the operation of a participant's financial management, property management, or purchasing system. Each participant's systems are organization-wide and do not vary with each agreement. Therefore, all TIAs should address systemic requirements in a uniform way for each type of participant organization.

§ 37.605 What is the general policy on participants' financial, property, and purchasing systems?

The general policy for expenditure-based TIAs is to avoid requirements that would force participants to use different financial management, property management, and purchasing systems than they currently use for:

(a) Expenditure-based Federal procurement contracts and assistance awards in general, if they receive them; or

(b) Commercial business, if they have no expenditure-based Federal procurement contracts and assistance awards.

§ 37.610 Must I tell participants what requirements they are to flow down for subrecipients' systems?

If it is an expenditure-based award, your TIA must require participants to flow down the same financial management, property management, and purchasing systems requirements to a subrecipient that would apply if the subrecipient were a participant. For example, a for-profit participant would flow down to a university subrecipient the requirements that apply to a university participant. Note that this policy applies to subawards for substantive performance of portions of the research project supported by the TIA, and not to participants' purchases of goods or services needed to carry out the research.

Financial Matters

§ 37.615 What standards do I include for financial systems of for-profit firms?

(a) To avoid causing needless changes in participants' financial management

[1] Electronic copies may be obtained at the Internet site *http://www.whitehouse.gov/OMB.* For paper copies, contact the Office of Management and Budget, EOP Publications, 725 17th St. NW., New Executive Office Building, Washington, DC 20503.

systems, your expenditure-based TIAs will make for-profit participants that currently perform under other expenditure-based Federal procurement contracts or assistance awards subject to the same standards for financial management systems that apply to those other awards. Therefore, if a for-profit participant has expenditure-based DoD assistance awards other than TIAs, your TIAs are to apply the standards in 32 CFR 34.11. You may grant an exception and allow a for-profit participant that has other expenditure-based Federal Government awards to use an alternative set of standards that meets the minimum criteria in paragraph (b) of this section, if there is a compelling programmatic or business reason to do so. For each case in which you grant an exception, you must document the reason in the award file.

(b) For an expenditure-based TIA, you are to allow and encourage each for-profit participant that does not currently perform under expenditure-based Federal procurement contracts or assistance awards (other than TIAs) to use its existing financial management system as long as the system, as a minimum:

(1) Complies with Generally Accepted Accounting Principles.

(2) Effectively controls all project funds, including Federal funds and any required cost share. The system must have complete, accurate, and current records that document the sources of funds and the purposes for which they are disbursed. It also must have procedures for ensuring that project funds are used only for purposes permitted by the agreement (see § 37.625).

(3) Includes, if advance payments are authorized under § 37.805, procedures to minimize the time elapsing between the payment of funds by the Government and the firm's disbursement of the funds for program purposes.

§ 37.620 What financial management standards do I include for nonprofit participants?

So as not to force system changes for any State, local government, institution of higher education, or other nonprofit organization, your expenditure-based TIA's requirements for the financial management system of any nonprofit participant are the same as those that apply to the participant's other Federal assistance awards. Specifically, the requirements are those in:

(a) 32 CFR 33.20 for State and local governments; and

(b) 32 CFR 32.21(b) for other nonprofit organizations, with the exception of Government-owned, contractor-operated (GOCO) facilities and Federally Funded Research and Development Centers (FFRDCs) that are excepted from the definition of ''recipient'' in 32 CFR part 32. Although it should occur infrequently, if a nonprofit GOCO or FFRDC is a participant, you must specify appropriate standards that conform as much as practicable with requirements in that participant's other Federal awards.

§ 37.625 What cost principles or standards do I require for for-profit participants?

(a) So as not to require any firm to needlessly change its cost-accounting system, your expenditure-based TIAs are to apply the Government cost principles in 48 CFR parts 31 and 231 to for-profit participants that currently perform under expenditure-based Federal procurement contracts or assistance awards (other than TIAs) and therefore have existing systems for identifying allowable costs under those principles. If there are programmatic or business reasons to do otherwise, you may grant an exception from this requirement, in which case you must document the reasons in your award file.

(b) For other for-profit participants, you may establish alternative standards in the agreement as long as that alternative provides, as a minimum, that Federal funds and funds counted as recipients' cost sharing will be used only for costs that:

(1) A reasonable and prudent person would incur in carrying out the research project contemplated by the agreement. Generally, elements of cost that appropriately are charged are those identified with research and development activities under the Generally Accepted Accounting Principles (see Statement of Financial Accounting Standards Number 2, ''Accounting for Research and Development Costs,'' October 1974[2]). Moreover, costs must be allocated to DoD and other projects in accordance with the relative benefits the projects receive. Costs charged to DoD projects must be given consistent treatment with costs allocated to the participants' other research and development activities (e.g., activities supported by the participants themselves or by non-Federal sponsors).

(2) Are consistent with the purposes stated in the governing Congressional authorizations and appropriations. You are responsible for ensuring that provisions in the award document address any requirements that result from authorizations and appropriations.

§ 37.630 Must I require a for-profit firm to use Federally approved indirect cost rates?

In accordance with the general policy in § 37.605, you must require a for-profit participant that has Federally approved indirect cost rates for its Federal procurement contracts to use those rates to accumulate and report costs under an expenditure-based TIA. This includes both provisional and final rates that are approved up until the time that the TIA is closed out. You may grant an exception from this requirement if there are programmatic or business reasons to do otherwise (e.g., the participant offers you a lower rate). If you grant an exception, the participant must accumulate and report the costs using an accounting system and practices that it uses for other customers (e.g., its commercial customers). Also, you must document the reason for the exception in your award file.

§ 37.635 What cost principles do I require a nonprofit participant to use?

So as not to force financial system changes for any nonprofit participant, your expenditure-based TIA will provide that costs to be charged to the research project by any nonprofit participant must be determined to be allowable in accordance with:

(a) OMB Circular A–87,[3] if the participant is a State or local governmental organization.

(b) OMB Circular A–21,[4] if the participant is an institution of higher education.

(c) 45 CFR part 74, appendix E, if the participant is a hospital.

(d) OMB Circular A–122, if the participant is any other type of nonprofit organization (the cost principles in 48 CFR parts 31 and 231 are to be used by any nonprofit organization that is identified in Circular A–122 as being subject to those cost principles).

§ 37.640 Must I include a provision for audits of for-profit participants?

If your TIA is an expenditure-based award, you must include in it an audit provision that addresses, for each for-profit participant:

(a) Whether the for-profit participant must have periodic audits, in addition to any award-specific audits, as described in § 37.645. Note that the DCAA or the Office of the Inspector

[2] Copies may be obtained from the Financial Accounting Standards Board (FASB), 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856–5116. Information about ordering also may be found at the Internet site http://www.fasb.org or by telephoning the FASB at (800)748–0659.

[3] See footnote 1 to § 37.570(a)(2).

[4] See footnote 1 to § 37.570(a)(2).

General, DoD (OIG, DoD), can provide advice on the types and scope of audits that may be needed in various circumstances.

(b) Whether the DCAA or an independent public accountant (IPA) will perform required audits, as discussed in § 37.650.

(c) How frequently any periodic audits are to be performed, addressed in § 37.655.

(d) Other matters described in § 37.660, such as audit coverage, allowability of audit costs, auditing standards, and remedies for noncompliance.

§ 37.645 Must I require periodic audits, as well as award-specific audits, of for-profit participants?

You need to consider requirements for both periodic audits and award-specific audits (as defined in § 37.1325 and § 37.1235, respectively). The way that your expenditure-based TIA addresses the two types of audits will vary, depending upon the type of for-profit participant.

(a) For for-profit participants that are audited by the DCAA or other Federal auditors, as described in §§ 37.650(b) and 37.655, you need not add specific requirements for periodic audits because the Federal audits should be sufficient to address whatever may be needed. Your inclusion in the TIA of the standard access-to-records provision for those for-profit participants, as discussed in § 37.915(a), gives the necessary access in the event that you or administrative agreements officers later need to request audits to address award-specific issues that arise.

(b) For each other for-profit participant, you:

(1) Should require that the participant have an independent auditor (i.e., the DCAA or an independent public accountant) conduct periodic audits of its systems if it expends $300,000 or more per year in TIAs and other Federal assistance awards. A prime reason for including this requirement is that the Federal Government, for an expenditure-based award, necessarily relies on amounts reported by the participant's systems when it sets payment amounts or adjusts performance outcomes. The periodic audit provides some assurance that the reported amounts are reliable.

(2) Must ensure that the award provides an independent auditor the access needed for award-specific audits, to be performed at the request of the cognizant administrative agreements officer if issues arise that require audit support. However, the expectation is that periodic audits will be all that is needed in most cases, and you should rely on them to the maximum extent possible to resolve any award-specific issues.

§ 37.650 Who must I identify as the auditor for a for-profit participant?

The auditor that you will identify in the expenditure-based TIA to perform periodic and award-specific audits of a for-profit participant depends on the circumstances, as follows:

(a) You may provide that an IPA will be the auditor for a for-profit participant that does not meet the criteria in paragraph (b) of this section, but only if the participant will not agree to give the DCAA access to the necessary books and records for audit purposes. Note that the allocable portion of the costs of the IPA's audit may be reimbursable under the TIA, as described in § 37.660(b). The IPA should be the one that the participant uses to perform other audits (e.g., of its financial statement), to minimize added burdens and costs. You must document in the award file the participant's unwillingness to give the DCAA access. The DCAA is to be the auditor if the participant grants the necessary access.

(b) Except as provided in paragraph (c) of this section, you must identify the DCAA as the auditor for any for-profit participant that is subject to DCAA audits because it is currently performing under a Federal award that is subject to the:

(1) Cost principles in 48 CFR part 31 of the Federal Acquisition Regulation (FAR) and 48 CFR part 231 of the Defense FAR Supplement; or

(2) Cost Accounting Standards in part 30 of the FAR (48 CFR part 30) and the associated Appendix (48 CFR 9903.201–1).

(c) If there are programmatic or business reasons that justify the use of an auditor other than the DCAA for a for-profit participant that meets the criteria in paragraph (b) of this section, you may provide that an IPA will be the auditor for that participant if you obtain prior approval from the Office of the Inspector General, DoD. You must submit requests for prior approval to the Assistant Inspector General (Auditing), 400 Army-Navy Drive, Arlington, VA 22202. Your request must include the name and address of the business unit(s) for which IPAs will be used. It also must explain why you judge that the participant will not give the DCAA the necessary access to records for audit purposes (e.g., you may submit a statement to that effect from the participant). The OIG, DoD, will respond within five working days of receiving the request for prior approval, either by notifying you of the decision (approval or disapproval) or giving you a date by which they will notify you of the decision.

§ 37.655 Must I specify the frequency of IPAs' periodic audits of for-profit participants?

If your expenditure-based TIA provides for periodic audits of a for-profit participant by an IPA, you must specify the frequency for those audits. You should consider having an audit performed during the first year of the award, when the participant has its IPA do its next financial statement audit, unless the participant already had a systems audit due to other Federal awards within the past two years. The frequency thereafter may vary depending upon the dollars the participant is expending annually under the award, but it is not unreasonable to require an updated audit every two to three years to reverify that the participant's systems are reliable (the audit then would cover the two or three-year period between audits). The DCAA is a source of advice on audit frequencies if your TIA provides for audits by IPAs.

§ 37.660 What else must I specify concerning audits of for-profit participants by IPAs?

If your expenditure-based TIA provides for audits of a for-profit participant by an IPA, you also must specify:

(a) What periodic audits are to cover. It is important that you specify audit coverage that is only as broad as needed to provide reasonable assurance of the participant's compliance with award terms that have a direct and material effect on the research project. Appendix C to this part provides guidance to for-profit participants and their IPAs that you may use for this purpose. The DCAA and the OIG, DoD, also can provide advice to help you set appropriate limits on audit objectives and scope.

(b) Who will pay for periodic and award-specific audits. The allocable portion of the costs of any audits by IPAs may be reimbursable under the TIA. The costs may be direct charges or allocated indirect costs, consistent with the participant's accounting system and practices.

(c) The auditing standards that the IPA will use. Unless you receive prior approval from the OIG, DoD, to do otherwise, you must provide that the IPA will perform the audits in

accordance with the Generally Accepted Government Auditing Standards.[5]

(d) The available remedies for noncompliance. The agreement must provide that the participant may not charge costs to the award for any audit that the agreements officer, with the advice of the OIG, DoD, determines was not performed in accordance with the Generally Accepted Government Auditing Standards or other terms of the agreement. It also must provide that the Government has the right to require the participant to have the IPA take corrective action and, if corrective action is not taken, that the agreements officer has recourse to any of the remedies for noncompliance identified in 32 CFR 34.52(a).

(e) The remedy if it later is found that the participant, at the time it entered into the TIA, was performing on a procurement contract or other Federal award subject to the Cost Accounting Standards at 48 CFR part 30 and the cost principles at 48 CFR part 31. Unless the OIG, DoD, approves an exception (see § 37.650(c)), the TIA's terms must provide that the DCAA will perform the audits for the agreement if it later is found that the participant, at the time the TIA was awarded, was performing under awards described in § 37.650(b) that gave the DCAA audit access to the participant's books and records.

(f) Where the IPA is to send audit reports. The agreement must provide that the IPA is to submit audit reports to the administrative agreements officer and the OIG, DoD. It also must require that the IPA report instances of fraud directly to the OIG, DoD.

(g) The retention period for the IPA's working papers. You must specify that the IPA is to retain working papers for a period of at least three years after the final payment, unless the working papers relate to an audit whose findings are not fully resolved within that period or to an unresolved claim or dispute (in which case, the IPA must keep the working papers until the matter is resolved and final action taken).

(h) Who will have access to the IPA's working papers. The agreement must provide for Government access to working papers.

§ 37.665 Must I require nonprofit participants to have periodic audits?

Yes, expenditure-based TIAs are assistance instruments subject to the Single Audit Act (31 U.S.C. 7501–7507), so nonprofit participants are subject to their usual requirements under that Act and OMB Circular A–133.[6] Specifically, the requirements are those in:

(a) 32 CFR 33.26 for State and local governments; and

(b) 32 CFR 32.26 for other nonprofit organizations. Note that those requirements also are appropriate for Government-owned, contractor-operated (GOCO) facilities and Federally Funded Research and Development Centers (FFRDCs) that are excluded from the definition of ''recipient'' in 32 CFR part 32, because nonprofit GOCOs and FFRDCs are subject to the Single Audit Act.

§ 37.670 Must I require participants to flow down audit requirements to subrecipients?

(a) Yes, in accordance with § 37.610, your expenditure-based TIA must require participants to flow down the same audit requirements to a subrecipient that would apply if the subrecipient were a participant.

(b) For example, a for-profit participant that is audited by the DCAA:

(1) Would flow down to a university subrecipient the Single Audit Act requirements that apply to a university participant.

(2) Could enter into a subaward allowing a for-profit participant, under the circumstances described in § 37.650(a), to use an IPA to do its audits.

(c) This policy applies to subawards for substantive performance of portions of the research project supported by the TIA, and not to participants' purchases of goods or services needed to carry out the research.

§ 37.675 Must I report when I enter into a TIA allowing a for-profit firm to use an IPA?

Yes, you must include that information with the data you provide for your DoD Component's annual submission to the Defense Technical Information Center (DTIC), as provided in § 37.1030(c).

§ 37.680 Must I require a participant to report when it enters into a subaward allowing a for-profit firm to use an IPA?

Yes, your expenditure-based TIA must require participants to report to you when they enter into any subaward allowing a for-profit participant to use an IPA, as described in § 37.670(b)(2). You must provide that information about the new subaward under the TIA for your DoD Component's annual submission to the DTIC, even though the TIA may have been reported in a prior year and does not itself have to be reported again.

Property

§ 37.685 May I allow for-profit firms to purchase real property and equipment with project funds?

(a) With the two exceptions described in paragraph (b) of this section, you must require a for-profit firm to purchase real property or equipment with its own funds that are separate from the research project. You should allow the firm to charge to an expenditure-based TIA only depreciation or use charges for real property or equipment (and your cost estimate for a fixed-support TIA only would include those costs). Note that the firm must charge depreciation consistently with its usual accounting practice. Many firms treat depreciation as an indirect cost. Any firm that usually charges depreciation indirectly for a particular type of property must not charge depreciation for that property as a direct cost to the TIA.

(b) In two situations, you may grant an exception and allow a for-profit firm to use project funds, which includes both the Federal Government and recipient shares, to purchase real property or equipment (i.e., to charge to the project the full acquisition cost of the property). The two circumstances, which should be infrequent for equipment and extremely rare for real property, are those in which you either:

(1) Judge that the real property or equipment will be dedicated to the project and have a current fair market value that is less than $5,000 by the time the project ends; or

(2) Give prior approval for the firm to include the full acquisition cost of the real property or equipment as part of the cost of the project (see § 37.535).

(c) If you grant an exception in either of the circumstances described in paragraphs (b)(1) and (2) of this section, you must make the real property or equipment subject to the property management standards in 32 CFR 34.21(b) through (d). As provided in those standards, the title to the real property or equipment will vest conditionally in the for-profit firm upon acquisition. Your TIA, whether it is a fixed-support or expenditure-based award, must specify that any item of equipment that has a fair market value of $5,000 or more at the conclusion of the project also will be subject to the disposition process in 32 CFR 34.21(e), whereby the Federal Government will recover its interest in the property at that time.

§ 37.690 How are nonprofit participants to manage real property and equipment?

For nonprofit participants, your TIA's requirements for vesting of title, use,

[5] The electronic document may be accessed at www.gao.gov. Printed copies may be purchased from the U.S. Government Printing Office; for ordering information, call (202)512–1800 or access the Internet site at www.gpo.gov.

[6] See footnote 1 to § 37.570(a)(2).

management, and disposition of real property or equipment acquired under the award are the same as those that apply to the participant's other Federal assistance awards. Specifically, the requirements are those in:

(a) 32 CFR 33.31 and 33.32, for participants that are States and local governmental organizations.

(b) 32 CFR 32.32 and 32.33, for other nonprofit participants, with the exception of nonprofit GOCOs and FFRDCs that are exempted from the definition of ''recipient'' in 32 CFR part 32. Although it should occur infrequently, if a nonprofit GOCO or FFRDC is a participant, you must specify appropriate standards that conform as much as practicable with requirements in that participant's other Federal awards. Note also that:

(1) If the TIA is a cooperative agreement (see appendix B to this part), 31 U.S.C. 6306 provides authority to vest title to tangible personal property in a nonprofit institution of higher education or in a nonprofit organization whose primary purpose is conducting scientific research, without further obligation to the Federal Government; and

(2) Your TIA therefore must specify any conditions on the vesting of title to real property or equipment acquired by any such nonprofit participant, or the title will vest in the participant without further obligation to the Federal Government, as specified in 32 CFR 32.33(b)(3).

§ 37.695 What are the requirements for Federally owned property?

If you provide Federally owned property to any participant for the performance of research under a TIA, you must require that participant to account for, use, and dispose of the property in accordance with:

(a) 32 CFR 34.22, if the participant is a for-profit firm.

(b) 32 CFR 33.32(f), if the participant is a State or local governmental organization. Note that 32 CFR 33.32(f) requires you to provide additional information to the participant on the procedures for managing the property.

(c) 32 CFR 32.33(a) and 32.34(f), if the participant is a nonprofit organization other than a GOCO or FFRDC (requirements for nonprofit GOCOs and FFRDCs should conform with the property standards that apply to their Federal procurement contracts).

§ 37.700 What are the requirements for supplies?

Your expenditure-based TIA's provisions should permit participants to use their existing procedures to account for and manage supplies. A fixed-support TIA should not include requirements to account for or manage supplies.

Purchasing

§ 37.705 What standards do I include for purchasing systems of for-profit firms?

(a) If your TIA is an expenditure-based award, it should require for-profit participants that currently perform under DoD assistance instruments subject to the purchasing standards in 32 CFR 34.31 to use the same requirements for TIAs, unless there are programmatic or business reasons to do otherwise (in which case you must document the reasons in the award file).

(b) You should allow other for-profit participants under expenditure-based TIAs to use their existing purchasing systems, as long as they flow down the applicable requirements in Federal statutes, Executive orders or Governmentwide regulations (see appendix E to this part for a list of those requirements).

(c) If your TIA is a fixed-support award, you need only require for-profit participants to flow down the requirements listed in appendix F to this part.

§ 37.710 What standards do I include for purchasing systems of nonprofit organizations?

(a) So as not to force system changes for any nonprofit participant, your expenditure-based TIA will provide that each nonprofit participant's purchasing system comply with:

(1) 32 CFR 33.36, if the participant is a State or local governmental organization.

(2) 32 CFR 32.40 through 32.49 if the participant is a nonprofit organization other than a GOCO or FFRDC that is excepted from the definition of ''recipient'' in 32 CFR part 32. Although it should occur infrequently, if a nonprofit GOCO or FFRDC is a participant, you must specify appropriate standards that conform as much as practicable with requirements in that participant's other Federal awards.

(b) If your TIA is a fixed-support award, you need only require nonprofit participants to flow down the requirements listed in appendix E to this part.

Subpart G—Award Terms Related to Other Administrative Matters

§ 37.800 Which administrative matters are covered in this subpart?

This subpart addresses ''non-systemic'' administrative matters that do not impose organization-wide requirements on a participant's financial management, property management, or purchasing system. Because an organization does not have to redesign its systems to accommodate award-to-award variations in these requirements, a TIA that you award may differ from other TIAs in the non-systemic requirements that it specifies for a given participant, based on the circumstances of the particular research project. To eliminate needless administrative complexity, you should handle some non-systemic requirements, such as the payment method, in a uniform way for the agreement as a whole.

Payments

§ 37.805 If I am awarding a TIA, what payment methods may I specify?

Your TIA may provide for:

(a) *Reimbursement*, as described in 32 CFR 34.12(a)(1), if it is an expenditure-based award.

(b) *Advance payments*, as described in 32 CFR 34.12(a)(2), subject to the conditions in 32 CFR 34.12(b)(2)(i) through (iii).

(c) *Payments based on payable milestones*. These are payments made according to a schedule that is based on predetermined measures of technical progress or other payable milestones. This approach relies upon the fact that, as research progresses throughout the term of the agreement, observable activity will be taking place. The recipient is paid upon the accomplishment of the predetermined measure of progress. Fixed-support TIAs must use this payment method and each measure of progress appropriately would be one of the well-defined outcomes that you identify in the agreement (this does not preclude use of an initial advance payment, if there is no alternative to meeting immediate cash needs). There are cash management considerations when this payment method is used as a means of financing for an expenditure-based TIA (see § 37.575 and § 37.1105).

§ 37.810 What should my TIA's provisions specify for the method and frequency of recipients' payment requests?

The procedure and frequency for payment requests depend upon the payment method, as follows:

(a) For either reimbursements or advance payments, your TIA must allow recipients to submit requests for payment at least monthly. You may authorize the recipients to use the forms or formats described in 32 CFR 34.12(d).

(b) If the payments are based on payable milestones, the recipient will submit a report or other evidence of

accomplishment to the program official at the completion of each predetermined activity. The agreement administrator may approve payment to the recipient after receiving validation from the program manager that the milestone was successfully reached.

§ 37.815 May the Government withhold payments?

Your TIA must provide that the administrative agreements officer may withhold payments in the circumstances described in 32 CFR 34.12(g), but not otherwise.

§ 37.820 Must I require a recipient to return interest on advance payments?

If your expenditure-based TIA provides for either advance payments or payable milestones, the agreement must require the recipient to:

(a) Maintain in an interest-bearing account any advance payments or milestone payment amounts received in advance of needs to disburse the funds for program purposes unless:

(1) The recipient receives less than $120,000 in Federal grants, cooperative agreements, and TIAs per year;

(2) The best reasonably available interest-bearing account would not be expected to earn interest in excess of $1,000 per year on the advance or milestone payments; or

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources for the project.

(b) Remit annually the interest earned to the administrative agreements officer.

Revision of Budget and Program Plans

§ 37.825 Must I require the recipient to obtain prior approval from the Government for changes in plans?

If it is an expenditure-based award, your agreement must require the recipient to obtain the agreement administrator's prior approval if there is to be a change in plans that results in a need for additional Federal funding (this is unnecessary for a fixed-support TIA because the recipient is responsible for additional costs of achieving the outcomes). Other than that, the program official's substantial involvement in the project should ensure that the Government has advance notice of changes in plans.

§ 37.830 May I let a recipient charge pre-award costs to the agreement?

Pre-award costs, as long as they are otherwise allowable costs of the project, may be charged to an expenditure-based TIA only with the specific approval of the agreements officer. All pre-award costs are incurred at the recipient's risk (i.e., no DoD Component is obligated to reimburse the costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover the costs).

Program Income

§ 37.835 What requirements do I include for program income?

Your TIA should apply the standards of 32 CFR 34.14 for program income that may be generated. Note the need to specify whether the recipient is to have any obligation to the Federal Government with respect to program income generated after the end of the project period (the period, as established in the award document, during which Federal support is provided). Doing so is especially important if the TIA includes a provision for the recipient to return any amounts to the Federal Government (see § 37.580).

Intellectual Property

§ 37.840 What general approach should I take in negotiating data and patent rights?

(a) You should confer with program officials and legal counsel to develop an overall strategy for intellectual property that takes into account inventions and data that may result from the project and future needs the Government may have for rights in them. The strategy should take into account any intellectual property the Government is furnishing and any pre-existing proprietary information that the recipient is furnishing, as well as data and inventions that may be generated under the award (recognizing that new data and inventions may be less valuable without pre-existing information). All pre-existing intellectual property, both the Government's and the recipient's, should be marked to give notice of its status.

(b) Because TIAs entail substantial cost sharing by recipients, you must use discretion in negotiating Government rights to data and patentable inventions resulting from research under the agreements. The considerations in §§ 37.845 through 37.875 are intended to serve as guidelines, within which you necessarily have considerable latitude to negotiate provisions appropriate to a wide variety of circumstances that may arise. Your goal should be a good balance between DoD interests in:

(1) Gaining access to the best technologies for defense needs, including technologies available in the commercial marketplace, and promoting commercialization of technologies resulting from the research. Either of these interests may be impeded if you negotiate excessive rights for the Government. One objective of TIAs is to help incorporate defense requirements into the development of what ultimately will be commercially available technologies, an objective that is best served by reducing barriers to commercial firms' participation in the research. In that way, the commercial technology and industrial base can be a source of readily available, reliable, and affordable components, subsystems, computer software, and other technological products and manufacturing processes for military systems.

(2) Providing adequate protection of the Government's investment, which may be weakened if the Government's rights are inadequate. You should consider whether the Government may require access to data or inventions for Governmental purposes, such as a need to develop defense-unique products or processes that the commercial marketplace likely will not address.

§ 37.845 What data rights should I obtain?

(a) You should seek to obtain what you, with the advice of legal counsel, judge is needed to ensure future Government use of technology that emerges from the research, as long as doing so is consistent with the balance between DoD interests described in § 37.840(b). You should consider data in which you wish to obtain license rights and data that you may wish to be delivered; since TIAs are assistance instruments rather than acquisition instruments, however, it is not expected that data would be delivered in most cases. What generally is needed is an irrevocable, world-wide license for the Government to use, modify, reproduce, release, or disclose for Governmental purposes the data that are generated under TIAs (including any data, such as computer software, in which a recipient may obtain a copyright). A Governmental purpose is any activity in which the United States Government participates, but a license for Governmental purposes does not include the right to use, or have or permit others to use, modify, reproduce, release, or disclose data for commercial purposes.

(b) You may negotiate licenses of different scope than described in paragraph (a) of this section when necessary to accomplish program objectives or to protect the Government's interests. Consult with legal counsel before negotiating a license of different scope.

(c) In negotiating data rights, you should consider the rights in background data that are necessary to fully utilize technology that is expected to result from the TIA, in the event the recipient does not commercialize the technology or chooses to protect any invention as a trade secret rather than by a patent. If a recipient intends to protect any invention as a trade secret, you should consult with your intellectual property counsel before deciding what information related to the invention the award should require the recipient to report.

§ 37.850 Should I require recipients to mark data?

To protect the recipient's interests in data, your TIA should require the recipient to mark any particular data that it wishes to protect from disclosure with a legend identifying the data as licensed data subject to use, release, or disclosure restrictions.

§ 37.855 How should I handle protected data?

Prior to releasing or disclosing data marked with a restrictive legend (as described in § 37.850) to third parties, you should require those parties to agree in writing that they will:

(a) Use the data only for governmental purposes; and

(b) Not release or disclose the data without the permission of the licensor (i.e., the recipient).

§ 37.860 What rights should I obtain for inventions?

(a) You should negotiate rights in inventions that represent a good balance between the Government's interests (see § 37.840(b)) and the recipient's interests. As explained in appendix B to this part:

(1) You have the flexibility to negotiate patent rights provisions that vary from what the Bayh-Dole statute (Chapter 18 of Title 35, U.S.C.) requires in many situations. You have that flexibility because TIAs include not only cooperative agreements, but also assistance transactions other than grants or cooperative agreements.

(2) Your TIA becomes an assistance instrument other than a grant or cooperative agreement if its patent rights provision varies from what Bayh-Dole requires in your situation. However, you need not consider that difference in the type of transaction until the agreement is finalized, and it should not affect the provision you negotiate.

(b) As long as it is consistent with the balance between DoD interests described in § 37.840(b) and the recipient's interests, you should seek to obtain for the Government, when an invention is conceived or first actually reduced to practice under a TIA, a nonexclusive, nontransferrable, irrevocable, paid-up license to practice the invention, or to have it practiced, for or on behalf of the United States throughout the world. The license is for Governmental purposes, and does not include the right to practice the invention for commercial purposes.

(c) To provide for the license described in paragraph (b) of this section, your TIA generally would include the patent-rights clause that 37 CFR 401.14 specifies to implement the Bayh-Dole statute's requirements. Note that:

(1) The clause is designed specifically for grants, contracts, and cooperative agreements awarded to small businesses and nonprofit organizations, the types of funding instruments and recipients to which the entire Bayh-Dole statute applies. As explained in appendix B to this part, only two Bayh-Dole requirements (in 35 U.S.C. sections 202(c)(4) and 203) apply to cooperative agreements with other performers, by virtue of an amendment to Bayh-Dole at 35 U.S.C. 210(c).

(2) You may use the same clause, suitably modified, in cooperative agreements with performers other than small businesses and nonprofit organizations. Doing so is consistent with a 1983 Presidential memorandum that calls for giving other performers rights in inventions from Federally supported research that are at least as great as the rights that Bayh-Dole gives to small businesses and nonprofit organizations (see Appendix B to this part for details). That Presidential memorandum is incorporated by reference in Executive Order 12591 (52 FR 13414, 3 CFR, 1987 Comp., p. 220), as amended by Executive Order 12618 (52 FR 48661, 3 CFR, 1987 Comp., p. 262).

(3) The clause provides for flow-down of Bayh-Dole patent-rights provisions to subawards with small businesses and nonprofit organizations.

(4) There are provisions in 37 CFR part 401 stating when you must include the clause (37 CFR 401.3) and, in cases when it is required, how you may modify and tailor it (37 CFR 401.5).

(d) You may negotiate Government rights of a different scope than the standard patent-rights provision described in paragraph (c) of this section when necessary to accomplish program objectives and foster the Government's interests. If you do so:

(1) With the help of the program manager and legal counsel, you must decide what best represents a reasonable arrangement considering the circumstances, including past investments, contributions under the current TIA, and potential commercial markets. Taking past investments as an example, you should consider whether the Government or the recipient has contributed more substantially to the prior research and development that provides the foundation for the planned effort. If the predominant past contributor to the particular technology has been:

(i) The Government, then the TIA's patent-rights provision should be at or close to the standard Bayh-Dole provision.

(ii) The recipient, then a less restrictive patent provision may be appropriate, to allow the recipient to benefit more directly from its investments.

(2) You should keep in mind that obtaining a nonexclusive license at the time of award, as described in paragraph (b) of this section, is valuable if the Government later requires access to inventions to enable development of defense-unique products or processes that the commercial marketplace is not addressing. If you do not obtain a license at the time of award, you should consider alternative approaches to ensure access, such as negotiating a priced option for obtaining nonexclusive licenses in the future to inventions that are conceived or reduced to practice under the TIA.

(3) You also may consider whether you want to provide additional flexibility by giving the recipient more time than the standard patent-rights provision does to:

(i) Notify the Government of an invention, from the time the inventor discloses it within the for-profit firm.

(ii) Inform the Government whether it intends to take title to the invention.

(iii) Commercialize the invention, before the Government license rights in the invention become effective.

§ 37.865 Should my patent provision include march-in rights?

Your TIA's patent rights provision should include the Bayh-Dole march-in rights clause at paragraph (j)(1) of 37 CFR 401.14, or an equivalent clause, concerning actions that the Government may take to obtain the right to use subject inventions, if the recipient fails to take effective steps to achieve practical application of the subject inventions within a reasonable time. The march-in provision may be modified to best meet the needs of the program. However, only infrequently should the march-in provision be entirely removed (e.g., you may wish to do so if a recipient is providing most of

the funding for a research project, with the Government providing a much smaller share).

§ 37.870 Should I require recipients to mark documents related to inventions?

To protect the recipient's interest in inventions, your TIA should require the recipient to mark documents disclosing inventions it desires to protect by obtaining a patent. The recipient should mark the documents with a legend identifying them as intellectual property subject to public release or public disclosure restrictions, as provided in 35 U.S.C. 205.

§ 37.875 Should my TIA include a provision concerning foreign access to technology?

(a) Consistent with the objective of enhancing the national security by increasing DoD reliance on the U.S. commercial technology and industrial bases, you must include a provision in the TIA that addresses foreign access to technology developed under the TIA.

(b) The provision must provide, as a minimum, that any transfer of the:

(1) Technology must be consistent with the U.S. export laws, regulations and policies (e.g., the International Traffic in Arms Regulation at 22 CFR part 121, *et seq.*, the DoD Industrial Security Regulation in DoD 5220.22–R,[7] and the Department of Commerce Export Regulation at 15 CFR part 770, *et seq.*), as applicable.

(2) Exclusive right to use or sell the technology in the United States must, unless the Government grants a waiver, require that products embodying the technology or produced through the use of the technology will be manufactured substantially in the United States. The provision may further provide that:

(i) In individual cases, the Government may waive the requirement of substantial manufacture in the United States upon a showing by the recipient that reasonable but unsuccessful efforts have been made to transfer the technology under similar terms to those likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(ii) In those cases, the DoD Component may require a refund to the Government of some or all the funds paid under the TIA for the development of the transferred technology.

(c) You may, but are not required to, seek to negotiate a domestic manufacture condition for transfers of nonexclusive rights to use or sell the technology in the United States, to parallel the one described for exclusive licenses in paragraph (b)(2) of this section, if you judge that nonexclusive licenses for foreign manufacture could effectively preclude the establishment of domestic sources of the technology for defense purposes.

Financial and Programmatic Reporting

§ 37.880 What requirements must I include for periodic reports on program and business status?

Your TIA must include either:

(a) The requirements in 32 CFR 32.51 and 32.52 for status reports on programmatic performance and, if it is an expenditure-based award, on financial performance; or

(b) Alternative requirements that, as a minimum, include periodic reports addressing program and, if it is an expenditure-based award, business status. You must require submission of the reports at least annually, and you may require submission as frequently as quarterly (this does not preclude a recipient from electing to submit more frequently than quarterly the financial information that is required to process payment requests if the award is an expenditure-based TIA that uses reimbursement or advance payments under § 37.810(a)). The requirements for the content of the reports are as follows:

(1) The program portions of the reports must address progress toward achieving program performance goals, including current issues, problems, or developments.

(2) The business portions of the reports, applicable only to expenditure-based awards, must provide summarized details on the status of resources (federal funds and non-federal cost sharing), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from those schedules; and discuss actions that will be taken to address the deviations. You may require a recipient to separately identify in these reports the expenditures for each participant in a consortium and for each programmatic milestone or task, if you, after consulting with the program official, judge that those additional details are needed for good stewardship.

§ 37.885 May I require updated program plans?

In addition to reports on progress to date, your TIA may include a provision requiring the recipient to annually prepare updated technical plans for the future conduct of the research effort. If your TIA does include a requirement for annual program plans, you also must require the recipient to submit the annual program plans to the agreements officer responsible for administering the TIA.

§ 37.890 Must I require a final performance report?

You need not require a final performance report that addresses all major accomplishments under the TIA. If you do not do so, however, there must be an alternative that satisfies the requirement in DoD Instruction 3200.14[8] to document all DoD Science and Technology efforts and disseminate the results through the Defense Technical Information Center (DTIC). An example of an alternative would be periodic reports throughout the performance of the research that collectively cover the entire project.

§ 37.895 How is the final performance report to be sent to the Defense Technical Information Center?

(a) Whether your TIA requires a final performance report or uses an alternative means under § 37.890, you may include an award term or condition or otherwise instruct the recipient to submit the documentation either:

(1) Directly to the DTIC; or

(2) To the office that is administering the award (for subsequent transmission to the DTIC).

(b) If you specify that the recipient is to submit the report directly to the DTIC, you also:

(1) Must instruct the recipient to include a fully completed DD Form 298 with each document, so that the DTIC can recognize the document as being related to the particular award and properly record its receipt; and

(2) Should advise the recipient to provide a copy of the completed DD Form 298 to the agreements officer responsible for administering the TIA.

§ 37.900 May I tell a participant that information in financial and programmatic reports will not be publicly disclosed?

You may tell a participant that:

(a) We may exempt from disclosure under the Freedom of Information Act (FOIA) a trade secret or commercial and financial information that a participant provides after the award, if the information is privileged or confidential

[7] Electronic copies may be obtained at the Internet site http://www.dtic.mil/whs/directives. Paper copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. Authorized users may obtain copies from the Defense Technical Information Center, 8725 John J. Kingman Rd., Suite 0944, Fort Belvoir, VA 22060–6218.

[8] See footnote 7 to § 37.875(b)(1).

information. The DoD Component that receives the FOIA request will review the information in accordance with DoD procedures at 32 CFR 286.23(h) (and any DoD Component supplementary procedures) to determine whether it is privileged or confidential information under the FOIA exemption at 5 U.S.C. 552(b)(4), as implemented by the DoD at 32 CFR 286.12(d).

(b) If the participant also provides information in the course of a competition prior to award, there is a statutory exemption for five years from FOIA disclosure requirements for certain types of information submitted at that time (see § 37.420).

§ 37.905 Must I make receipt of the final performance report a condition for final payment?

If a final report is required, your TIA should make receipt of the report a condition for final payment. If the payments are based on payable milestones, the submission and acceptance of the final report by the Government representative will be incorporated as an event that is a prerequisite for one of the payable milestones.

Records Retention and Access Requirements

§ 37.910 How long must I require participants to keep records related to the TIA?

Your TIA must require participants to keep records related to the TIA (for which the agreement provides Government access under § 37.915) for a period of three years after submission of the final financial status report for an expenditure-based TIA or final programmatic status report for a fixed-support TIA, with the following exceptions:

(a) The participant must keep records longer than three years after submission of the final financial status report if the records relate to an audit, claim, or dispute that begins but does not reach its conclusion within the 3-year period. In that case, the participant must keep the records until the matter is resolved and final action taken.

(b) Records for any real property or equipment acquired with project funds under the TIA must be kept for three years after final disposition.

§ 37.915 What requirement for access to a for-profit participant's records do I include in a TIA?

(a) If a for-profit participant currently grants access to its records to the DCAA or other Federal Government auditors, your TIA must include for that participant the standard access-to-records requirements at 32 CFR 34.42(e). If the agreement is a fixed-support TIA, the language in 32 CFR 34.42(e) may be modified to provide access to records concerning the recipient's technical performance, without requiring access to the recipient's financial or other records. Note that any need to address access to technical records in this way is in addition to, not in lieu of, the need to address rights in data (see § 37.845).

(b) For other for-profit participants that do not currently give the Federal Government direct access to their records and are not willing to grant full access to records pertinent to the award, there is no set requirement to include a provision in your TIA for Government access to records. If the audit provision of an expenditure-based TIA gives an IPA access to the recipient's financial records for audit purposes, the Federal Government must have access to the IPA's reports and working papers and you need not include a provision requiring direct Government access to the recipient's financial records. For both fixed-support and expenditure-based TIAs, you may wish to negotiate Government access to recipient records concerning technical performance. Should you negotiate a provision giving access only to specific Government officials (e.g., the agreements officer), rather than a provision giving Government access generally, it is important to let participants know that the OIG, DoD, has a statutory right of access to records and other materials to which other DoD Component officials have access.

§ 37.920 What requirement for access to a nonprofit participant's records do I include in a TIA?

Your TIA must include for any nonprofit participant the standard access-to-records requirement at:

(a) 32 CFR 33.42(e), for a participant that is a State or local governmental organization.

(b) 32 CFR 32.53(e), for a participant that is a nonprofit organization. The same requirement applies to any nonprofit GOCO or FFRDC, even though nonprofit GOCOs and FFRDCs are exempted from the definition of ''recipient'' in 32 CFR part 32.

Termination and Enforcement

§ 37.925 What requirements do I include for termination and enforcement?

Your TIA must apply the standards of 32 CFR 34.51 for termination, 32 CFR 34.52 for enforcement, and your organization's procedures implementing 32 CFR 22.815 for disputes and appeals.

Subpart H—Executing the Award

§ 37.1000 What are my responsibilities at the time of award?

At the time of the award, you must:

(a) Ensure that the award document contains the appropriate terms and conditions and is signed by the appropriate parties, in accordance with §§ 37.1005 through 37.1015.

(b) Document your analysis of the agreement in the award file, as discussed in § 37.1020.

(c) Provide information about the award to offices responsible for reporting, as described in §§ 37.1025 through 37.1035.

(d) Distribute copies of the award document, as required by § 37.1045.

The Award Document

§ 37.1005 What are my general responsibilities concerning the award document?

You are responsible for ensuring that the award document is complete and accurate. Your objective is to create a document that:

(a) Addresses all issues;

(b) States requirements directly. It is not helpful to readers to incorporate statutes or rules by reference, without sufficient explanation of the requirements. You generally should not incorporate clauses from the Federal Acquisition Regulation (48 CFR parts 1–53) or Defense Federal Acquisition Regulation Supplement (48 CFR parts 201–253), because those provisions are designed for procurement contracts that are used to acquire goods and services, rather than for TIAs or other assistance instruments.

(c) Is written in clear and concise language, to minimize potential ambiguity.

§ 37.1010 What substantive issues should my award document address?

You necessarily will design and negotiate a TIA individually to meet the specific requirements of the particular project, so the complete list of substantive issues that you will address in the award document may vary. Every award document must address:

(a) *Project scope.* The scope is an overall vision statement for the project, including a discussion of the project's purpose, objectives, and detailed military and commercial goals. It is a critical provision because it provides a context for resolving issues that may arise during post-award administration. In a fixed-support TIA, you also must clearly specify the well-defined outcomes that reliably indicate the amount of effort expended and serve as the basis for the level of the fixed support (see §§ 37.305 and 37.560(a)).

(b) *Project management.* You should describe the nature of the relationship between the Federal Government and the recipient; the relationship among the participants, if the recipient is an unincorporated consortium; and the overall technical and administrative management of the project. TIAs are used to carry out collaborative relationships between the Federal Government and the recipient. Consequently, there must be substantial involvement of the DoD program official (see § 37.220) and usually the administrative agreements officer. The program official provides technical insight, which differs from the usual technical oversight of a project. The management provision also should discuss how you and the recipient will make any modifications to the TIA.

(c) *Termination, enforcement, and disputes.* Your TIA must provide for termination, enforcement remedies, and disputes and appeals procedures, in accordance with § 37.925.

(d) *Funding.* You must:

(1) Show the total amount of the agreement and the total period of performance.

(2) If the TIA is an expenditure-based award, state the Government's and recipient's agreed-upon cost shares. The award document should identify values for any in-kind contributions, determined in accordance with §§ 37.530 through 37.555, to preclude later disagreements about them.

(3) Specify the amount of Federal funds obligated and the performance period for those obligated funds.

(4) State, if the agreement is to be incrementally funded, that the Government's obligation for additional funding is contingent upon the availability of funds and that no legal obligation on the part of the Government exists until additional funds are made available and the agreement is amended. You also must include a prior approval requirement for changes in plans requiring additional Government funding, in accordance with § 37.825.

(e) *Payment.* You must choose the payment method and tell the recipient how, when, and where to submit payment requests, as discussed in §§ 37.805 through 37.815. Your payment method must take into account sound cash management practices by avoiding unwarranted cash advances. For an expenditure-based TIA, your payment provision must require the return of interest should excess cash balances occur, in accordance with § 37.820.

(f) *Records retention and access to records.* You must include the records retention requirement at § 37.910. You also must provide for access to for-profit and nonprofit participants' records, in accordance with § 37.915 and § 37.920.

(g) *Patents and data rights.* In designing the patents and data rights provision, you must set forth the minimum required Federal Government rights in intellectual property generated under the award and address related matters, as provided in §§ 37.840 through 37.875. It is important to define all essential terms in the patent rights provision.

(h) *Foreign access to technology.* You must include a provision, in accordance with § 37.875, concerning foreign access and domestic manufacture of products using technology generated under the award.

(i) *Title to, management of, and disposition of tangible property.* Your property provisions for for-profit and nonprofit participants must be in accordance with §§ 37.685 through 37.700.

(j) *Financial management systems.* For an expenditure-based award, you must specify the minimum standards for financial management systems of both for-profit and nonprofit participants, in accordance with §§ 37.615 and 37.620.

(k) *Allowable costs.* If the TIA is an expenditure-based award, you must specify the standards that both for-profit and nonprofit participants are to use to determine which costs may be charged to the project, in accordance with §§ 37.625 through 37.635, as well as § 37.830.

(l) *Audits.* If your TIA is an expenditure-based award, you must include an audit provision for both for-profit and nonprofit participants and subrecipients, in accordance with §§ 37.640 through 37.670 and § 37.680.

(m) *Purchasing system standards.* You should include a provision specifying the standards in §§ 37.705 and 37.710 for purchasing systems of for-profit and nonprofit participants, respectively.

(n) *Program income.* You should specify requirements for program income, in accordance with § 37.835.

(o) *Financial and programmatic reporting.* You must specify the reports that the recipient is required to submit and tell the recipient when and where to submit them, in accordance with §§ 37.880 through 37.905.

(p) *Assurances for applicable national policy requirements.* You must incorporate assurances of compliance with applicable requirements in Federal statutes, Executive orders, or regulations (except for national policies that require certifications). Appendix D to this part contains a list of commonly applicable requirements that you need to augment with any specific requirements that apply in your particular circumstances (e.g., general provisions in the appropriations act for the specific funds that you are obligating).

(q) *Other routine matters.* The agreement should address any other issues that need clarification, including who in the Government will be responsible for post-award administration and the statutory authority or authorities for entering into the TIA (see appendix B to this part for a discussion of statutory authorities). In addition, the agreement must specify that it takes precedence over any inconsistent terms and conditions in collateral documents such as attachments to the TIA or the recipient's articles of collaboration.

§ 37.1015 How do I decide who must sign the TIA if the recipient is an unincorporated consortium?

(a) If the recipient is a consortium that is not formally incorporated and the consortium members prefer to have the agreement signed by all of them individually, you may execute the agreement in that manner.

(b) If they wish to designate one consortium member to sign the agreement on behalf of the consortium as a whole, you should not decide whether to execute the agreement in that way until you review the consortium's articles of collaboration with legal counsel.

(1) The purposes of the review are to:

(i) Determine whether the articles properly authorize one participant to sign on behalf of the other participants and are binding on all consortium members with respect to the research project; and

(ii) Assess the risk that otherwise could exist when entering into an agreement signed by a single member on behalf of a consortium that is not a legal entity. For example, you should assess whether the articles of collaboration adequately address consortium members' future liabilities related to the research project (i.e., whether they will have joint and severable liability).

(2) After the review, in consultation with legal counsel, you should determine whether it is better to have all of the consortium members sign the agreement individually or to allow them to designate one member to sign on all members' behalf.

Reporting Information About the Award

§ 37.1020 What must I document in my award file?

You should include in your award file an agreements analysis in which you:

(a) Briefly describe the program and detail the specific military and commercial benefits that should result from the project supported by the TIA. If the recipient is a consortium that is not formally incorporated, you should attach a copy of the signed articles of collaboration.

(b) Describe the process that led to the award of the TIA, including how you and program officials solicited and evaluated proposals and selected the one supported through the TIA.

(c) Explain how you decided that a TIA was the most appropriate instrument, in accordance with the factors in subpart B of this part. Your explanation must include your answers to the relevant questions in § 37.225(a) through (d).

(d) Explain how you valued the recipient's cost sharing contributions, in accordance with §§ 37.530 through 37.555.

(e) Document the results of your negotiation, addressing all significant issues in the TIA's provisions. For example, this includes specific explanations if you:

(1) Specify requirements for a participant's systems that vary from the standard requirements in §§ 37.615(a), 37.625(a), 37.630, or 37.705(a) of subpart G of this part, in cases where those sections provide flexibility for you to do so.

(2) Provide that any audits are to be performed by an IPA, rather than the DCAA, where permitted under § 37.650. Your documentation must include:

(i) The names and addresses of business units for which IPAs will be the auditors;

(ii) Estimated amounts of Federal funds expected under the award for those business units; and

(iii) The basis (e.g., a written statement from the recipient) for your judging that the business units do not currently perform under types of awards described in § 37.650(b)(1) and (2) and are not willing to grant the DCAA audit access.

(3) Include an intellectual property provision that varies from Bayh-Dole requirements.

(4) Determine that cost sharing is impracticable.

§ 37.1025 Must I report information to the Defense Assistance Awards Data System?

Yes, you must give the necessary information about the award to the office in your organization that is responsible for preparing DD Form 2566 reports for the Defense Assistance Award Data System, to ensure timely and accurate reporting of data required by 31 U.S.C. 6101–6106 (see 32 CFR part 21, subpart C).

§ 37.1030 What information must I report to the Defense Technical Information Center?

(a) For any TIA, you must give your answers to the questions in § 37.225(a) through (d) to the office in your DoD Component that is responsible for providing data on TIAs to the DTIC. Contact DTIC–OCP, 8725 John J. Kingman Rd., Suite 0928, Fort Belvoir, VA 22060–6218, if you are unsure about the responsible office in your DoD Component. The DTIC compiles the information to help the Department of Defense measure the Department-wide benefits of using TIAs and assess the instruments' value in helping to meet the policy objectives described in § 37.205(b) and Appendix A to this part.

(b) If the TIA uses the authority of 10 U.S.C. 2371, as described in § 37.1035, your information submission for the DTIC under paragraph (a) of this section must include the additional data required for the DoD's annual report to Congress.

(c) If, as permitted under § 37.650, the TIA includes a provision allowing a for-profit participant to have audits performed by an IPA, rather than the DCAA, you must report that fact with the other information you submit about the TIA. Note that you also must include information about any use of IPAs permitted by subawards that participants make to for-profit firms, as provided in § 37.670. Information about a subaward under the TIA must be reported even if you receive the information in a subsequent year, when information about the TIA itself does not need to be reported.

(d) The requirements in this section to report information to the DTIC should not be confused with the post-award requirement to forward copies of technical reports to the DTIC, as described at §§ 37.890 and 37.895. The reporting requirements in this section are assigned the Report Control Symbol DD–A&T(A)1936.

§ 37.1035 How do I know if my TIA uses the 10 U.S.C. 2371 authority and I must report additional data under § 37.1030(b)?

As explained in appendix B to this part, a TIA uses the authority of 10 U.S.C. 2371 and therefore must be included in the DoD's annual report to Congress on the use of 10 U.S.C. 2371 authorities if it:

(a) Is an assistance transaction other than a grant or cooperative agreement, by virtue of its patent rights provision; or

(b) Includes a provision to recover funds from a recipient, as described at § 37.580.

§ 37.1040 When and how do I report information required by § 37.1035?

Information that you report, in accordance with § 37.1030, to the office that your DoD Component designates as the central point for reporting to the DTIC must be:

(a) Submitted quarterly, by the date that your central point establishes.

(b) In the format that your central point provides (which is consistent with the format that the DTIC specifies to DoD Components).

Distributing Copies of the Award Document

§ 37.1045 To whom must I send copies of the award document?

You must send a copy of the award document to the:

(a) Recipient. You must include on the first page of the recipient's copy a prominent notice about the current DoD requirements for payment by electronic funds transfer (EFT).

(b) Office you designate to administer the TIA. You are strongly encouraged to delegate post-award administration to the regional office of the Defense Contract Management Agency or Office of Naval Research that administers awards to the recipient. When delegating, you should clearly indicate on the cover sheet or first page of the award document that the award is a TIA, to help the post-award administrator distinguish it from other types of assistance instruments.

(c) Finance and accounting office designated to make the payments to the recipient.

Subpart I—Post-Award Administration

§ 37.1100 What are my responsibilities generally as an administrative agreements officer for a TIA?

As the administrative agreements officer for a TIA, you have the responsibilities that your office agreed to accept in the delegation from the office that made the award. Generally, you will have the same responsibilities as a post-award administrator of a grant or cooperative agreement, as described in 32 CFR 22.715. Responsibilities for TIAs include:

(a) Advising agreements officers before they award TIAs on how to establish award terms and conditions that better meet research programmatic needs, facilitate effective post-award administration, and ensure good stewardship of Federal funds.

(b) Participating as the business partner to the DoD program official to ensure the Government's substantial involvement in the research project. This may involve attendance with

program officials at kickoff meetings or post-award conferences with recipients. It also may involve attendance at the consortium management's periodic meetings to review technical progress, financial status, and future program plans.

(c) Tracking and processing of reports required by the award terms and conditions, including periodic business status reports, programmatic progress reports, and patent reports.

(d) Handling payment requests and related matters. For a TIA using advance payments, that includes reviews of progress to verify that there is continued justification for advancing funds, as discussed in § 37.1105(b). For a TIA using milestone payments, it includes making any needed adjustments in future milestone payment amounts, as discussed in § 37.1105(c).

(e) Coordinating audit requests and reviewing audit reports for both single audits of participants' systems and any award-specific audits that may be needed, as discussed in §§ 37.1115 and 37.1120.

(f) Responding, after coordination with program officials, to recipient requests for permission to sell or exclusively license intellectual property to entities that do not agree to manufacture substantially in the United States, as described in § 37.875(b). Before you grant approval for any technology, you must secure assurance that the Government will be able to use the technology (e.g., a reasonable license for Government use, if the recipient is selling the technology) or seek reimbursement of the Government's investments.

(g) Notifying the agreements officer who made the award if a participant informs you about a subaward allowing a for-profit subrecipient to have audits performed by an IPA, rather than the DCAA. You should alert the awarding official that he or she must report the information, as required by § 37.1030(c).

§ 37.1105 What additional duties do I have as the administrator of a TIA with advance payments or payable milestones?

Your additional post-award responsibilities as an administrative agreements officer for an expenditure-based TIA with advance payments or payable milestones are to ensure good cash management. To do so, you must:

(a) For any expenditure-based TIA with advance payments or payable milestones, forward to the responsible payment office any interest that the recipient remits in accordance with § 37.820(b). The payment office will return the amounts to the Department of the Treasury's miscellaneous receipts account.

(b) For any expenditure-based TIA with advance payments, consult with the program official and consider whether program progress reported in periodic reports, in relation to reported expenditures, is sufficient to justify your continued authorization of advance payments under § 37.805(b).

(c) For any expenditure-based TIA using milestone payments, work with the program official at the completion of each payable milestone or upon receipt of the next business status report to:

(1) Compare the total amount of project expenditures, as recorded in the payable milestone report or business status report, with the projected budget for completing the milestone; and

(2) Adjust future payable milestones, as needed, if expenditures lag substantially behind what was originally projected and you judge that the recipient is receiving Federal funds sooner than necessary for program purposes. Before making adjustments, you should consider how large a deviation is acceptable at the time of the milestone. For example, suppose that the first milestone payment for a TIA you are administering is $50,000, and that the awarding official set the amount based on a projection that the recipient would have to expend $100,000 to reach the milestone (i.e., the original plan was for the recipient's share at that milestone to be 50% of project expenditures). If the milestone payment report shows $90,000 in expenditures, the recipient's share at this point is 44% ($40,000 out of the total $90,000 expended, with the balance provided by the $50,000 milestone payment of Federal funds). For this example, you should adjust future milestones if you judge that a 6% difference in the recipient's share at the first milestone is too large, but not otherwise. Remember that milestone payment amounts are not meant to track expenditures precisely at each milestone and that a recipient's share will increase as it continues to perform research and expend funds, until it completes another milestone to trigger the next Federal payment.

§ 37.1110 What other responsibilities related to payments do I have?

If you are the administrative agreements officer, you have the responsibilities described in 32 CFR 22.810(c), regardless of the payment method. You also must ensure that you do not withhold payments, except in one of the circumstances described in 32 CFR 34.12(g).

§ 37.1115 What are my responsibilities related to participants' single audits?

For audits of for-profit participant's systems, under §§ 37.640 through 37.660, you are the focal point within the Department of Defense for ensuring that participants submit audit reports and for resolving any findings in those reports. Nonprofit participants send their single audit reports to a Governmentwide clearinghouse. For those participants, the Office of the Assistant Inspector General (Auditing) should receive any DoD-specific findings from the clearinghouse and refer them to you for resolution, if you are the appropriate official to do so.

§ 37.1120 When and how may I request an award-specific audit?

Guidance on when and how you should request additional audits for expenditure-based TIAs is identical to the guidance for grants officers in 32 CFR 34.16(d). If you require an award-specific examination or audit of a for-profit participant's records related to a TIA, you must use the auditor specified in the award terms and conditions, which should be the same auditor who performs periodic audits of the participant. The DCAA and the OIG, DoD, are possible sources of advice on audit-related issues, such as appropriate audit objectives and scope.

Subpart J—Definitions of Terms Used in this Part

§ 37.1205 Advance.

A payment made to a recipient before the recipient disburses the funds for program purposes. Advance payments may be based upon recipients' requests or predetermined payment schedules.

§ 37.1210 Advanced research.

Research that creates new technology or demonstrates the viability of applying existing technology to new products and processes in a general way. Advanced research is most closely analogous to precompetitive technology development in the commercial sector (i.e., early phases of research and development on which commercial competitors are willing to collaborate, because the work is not so coupled to specific products and processes that the results of the work must be proprietary). It does not include development of military systems and hardware where specific requirements have been defined. It is typically funded in Research, Development, Test and Evaluation programs within Budget Activity 3, Advanced Technology Development.

§ 37.1215 Agreements officer.

An official with the authority to enter into, administer, and/or terminate TIAs (see § 37.125).

§ 37.1220 Applied research.

Efforts that attempt to determine and exploit the potential of scientific discoveries or improvements in technology such as new materials, devices, methods and processes. It typically is funded in Research, Development, Test and Evaluation programs within Budget Activity 2, Applied Research (also known informally as research category 6.2) programs. Applied research normally follows basic research but may not be fully distinguishable from the related basic research. The term does not include efforts whose principal aim is the design, development, or testing of specific products, systems or processes to be considered for sale or acquisition; these efforts are within the definition of ''development.''

§ 37.1225 Articles of collaboration.

An agreement among the participants in a consortium that is not formally incorporated as a legal entity, by which they establish their relative rights and responsibilities (see § 37.515).

§ 37.1230 Assistance.

The transfer of a thing of value to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States (see 31 U.S.C. 6101(3)). Grants, cooperative agreements, and technology investment agreements are examples of legal instruments used to provide assistance.

§ 37.1235 Award-specific audit.

An audit of a single TIA, usually done at the cognizant agreements officer's request, to help resolve issues that arise during or after the performance of the research project. An award-specific audit of an individual award differs from a periodic audit of a participant (as defined in § 37.1325).

§ 37.1240 Basic research.

Efforts directed toward increasing knowledge and understanding in science and engineering, rather than the practical application of that knowledge and understanding. It typically is funded within Research, Development, Test and Evaluation programs in Budget Activity 1, Basic Research (also known informally as research category 6.1).

§ 37.1245 Cash contributions.

A recipient's cash expenditures made as contributions toward cost sharing, including expenditures of money that third parties contributed to the recipient.

§ 37.1250 Commercial firm.

A for-profit firm or segment of a for-profit firm (e.g., a division or other business unit) that does a substantial portion of its business in the commercial marketplace.

§ 37.1255 Consortium.

A group of research-performing organizations that either is formally incorporated or that otherwise agrees to jointly carry out a research project (see definition of ''articles of collaboration,'' in § 37.1225).

§ 37.1260 Cooperative agreement.

A legal instrument which, consistent with 31 U.S.C. 6305, is used to enter into the same kind of relationship as a grant (see definition of ''grant,'' in § 37.1295), except that substantial involvement is expected between the Department of Defense and the recipient when carrying out the activity contemplated by the cooperative agreement. The term does not include ''cooperative research and development agreements'' as defined in 15 U.S.C. 3710a.

§ 37.1265 Cost sharing.

A portion of project costs that are borne by the recipient or non-Federal third parties on behalf of the recipient, rather than by the Federal Government.

§ 37.1270 Data.

Recorded information, regardless of form or method of recording. The term includes technical data, which are data of a scientific or technical nature, and computer software. It does not include financial, cost, or other administrative information related to the administration of a TIA.

§ 37.1275 DoD Component.

The Office of the Secretary of Defense, a Military Department, a Defense Agency, or a DoD Field Activity.

§ 37.1280 Equipment.

Tangible property, other than real property, that has a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

§ 37.1285 Expenditure-based award.

A Federal Government contract or assistance award for which the amounts of interim payments or the total amount ultimately paid (i.e., the sum of interim payments and final payment) are subject to redetermination or adjustment, based on the amounts expended by the recipient in carrying out the purposes for which the award was made. Most Federal Government grants and cooperative agreements are expenditure-based awards.

§ 37.1290 Expenditures or outlays.

Charges made to the project or program. They may be reported either on a cash or accrual basis, as shown in the following table:

If reports are prepared on a . . .	Expenditures are the sum of . . .
(a) Cash basis	(1) Cash disbursements for direct charges for goods and services; (2) The amount of indirect expense charged; (3) The value of third party in-kind contributions applied; and (4) The amount of cash advances and payments made to any other organizations for the performance of a part of the research effort.
(b) Accrual basis	(1) Cash disbursements for direct charges for goods and services; (2) The amount of indirect expense incurred; (3) The value of in-kind contributions applied; and (4) The net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, and other payees and other amounts becoming owed under programs for which no current services or performance are required.

§ 37.1295 Grant.

A legal instrument which, consistent with 31 U.S.C. 6304, is used to enter into a relationship:

(a) The principal purpose of which is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law of the United States, rather than to acquire property or services for the Department of Defense's direct benefit or use.

(b) In which substantial involvement is not expected between the Department of Defense and the recipient when carrying out the activity contemplated by the grant.

§ 37.1300 In-kind contributions.

The value of non-cash contributions made by a recipient or non-Federal third parties toward cost sharing.

§ 37.1305 Institution of higher education.

An educational institution that:

(a) Meets the criteria in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)); and

(b) Is subject to the provisions of OMB Circular A–110, ''Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' as implemented by the Department of Defense at 32 CFR part 32.

§ 37.1310 Intellectual property.

Inventions, data, works of authorship, and other intangible products of intellectual effort that can be owned by a person, whether or not they are patentable or may be copyrighted. The term also includes mask works, such as those used in microfabrication, whether or not they are tangible.

§ 37.1315 Nonprofit organization.

(a) Any corporation, trust, association, cooperative or other organization that:

(1) Is operated primarily for scientific, educational, service, or similar purposes in the public interest.

(2) Is not organized primarily for profit; and

(3) Uses its net proceeds to maintain, improve, or expand the operations of the organization.

(b) The term includes any nonprofit institution of higher education or nonprofit hospital.

§ 37.1320 Participant.

A consortium member or, in the case of an agreement with a single for-profit entity, the recipient. Note that a for-profit participant may be a firm or a segment of a firm (e.g., a division or other business unit).

§ 37.1325 Periodic audit.

An audit of a participant, performed at an agreed-upon time (usually a regular time interval), to determine whether the participant as a whole is managing its Federal awards in compliance with the terms of those awards. Appendix C to this part describes what such an audit may cover. A periodic audit of a participant differs from an award-specific audit of an individual award (as defined in § 37.1235).

§ 37.1330 Procurement contract.

A Federal Government procurement contract. It is a legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a State, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. See the more detailed definition of the term ''contract'' at 48 CFR 2.101.

§ 37.1335 Program income.

Gross income earned by the recipient or a participant that is generated by a supported activity or earned as a direct result of a TIA. Program income includes but is not limited to: income from fees for performing services; the use or rental of real property, equipment, or supplies acquired under a TIA; the sale of commodities or items fabricated under a TIA; and license fees and royalties on patents and copyrights. Interest earned on advances of Federal funds is not program income.

§ 37.1340 Program official.

A Federal Government program manager, scientific officer, or other individual who is responsible for managing the technical program being carried out through the use of a TIA.

§ 37.1345 Property.

Real property, equipment, supplies, and intellectual property, unless stated otherwise.

§ 37.1350 Real property.

Land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

§ 37.1355 Recipient.

An organization or other entity that receives a TIA from a DoD Component. Note that a for-profit recipient may be a firm or a segment of a firm (e.g., a division or other business unit).

§ 37.1360 Research.

Basic, applied, and advanced research, as defined in this subpart.

§ 37.1365 Supplies.

Tangible property other than real property and equipment. Supplies have a useful life of less than one year or an acquisition cost of less than $5,000 per unit.

§ 37.1370 Termination.

The cancellation of a TIA, in whole or in part, at any time prior to either:

(a) The date on which all work under the TIA is completed; or

(b) The date on which Federal sponsorship ends, as given in the award document or any supplement or amendment thereto.

§ 37.1375 Technology investment agreements.

A special class of assistance instruments used to increase involvement of commercial firms in defense research programs and for other purposes (described in appendix A to this part) related to integrating the commercial and defense sectors of the nation's technology and industrial base. A technology investment agreement may be a cooperative agreement with provisions tailored for involving commercial firms (as distinct from a cooperative agreement subject to all of the requirements in 32 CFR part 34), or another kind of assistance transaction (see appendix B to this part).

Appendix A to Part 37—What is the Civil-Military Integration Policy that is the Basis for Technology Investment Agreements?

A. TIAs complement other funding instruments that are available to agreements officers in that they are designed to foster civil-military integration in DoD Science and Technology (S&T) programs. Civil-military integration creates a single, national technology and industrial base upon which the DoD can draw to meet its needs. Achieving civil-military integration is a national policy objective, as stated in 10 U.S.C. 2501.

B. Civil-military integration includes:

1. Removing barriers to participation in DoD programs by commercial firms, firms that deal primarily in the commercial marketplace. In recent years, some commercial firms judged that it would be overly burdensome and costly for them to comply with Government-unique requirements. That belief caused some firms to decline to do cost-type business with the Federal Government. It caused other firms to create divisions for Government business that are separate and isolated from their divisions for commercial business. TIAs give agreements officers flexibility to tailor Government requirements and lower or remove barriers to firms' participation, where the tailoring of requirements can be done consistently with good stewardship of Federal Government funds.

2. Creating new business relationships among the performers in the technology and industrial base. Collaborations among commercial firms, firms that regularly perform defense programs, and nonprofit organizations can create wholes that are greater than the sums of the parts. The collaborations can enhance overall quality and productivity.

3. Promoting the development and use of new business practices and disseminating current best practices throughout the technology and industrial base.

C. The use of TIAs to promote civil-military integration will help defense S&T programs achieve their primary mission. That mission is to develop superior technology and help transition the technology to applications that enable affordable, decisive military capability. The use of TIAs to increase access to commercial firms, to create new relationships, and to promote better business practices will help:

1. Increase technological sophistication. The DoD and firms that currently perform defense programs will benefit from technology in the commercial marketplace that often is more advanced than what is available in the defense-specific sector.

2. Reduce DoD's life-cycle costs for buying, operating, and maintaining weapon and support systems. The intent is that the DoD and firms that currently perform defense programs will be able to take advantage of the economies of scale of the commercial marketplace, which has a much larger volume of business for many high-technology products and processes than the Federal Government's share alone.

Appendix B to Part 37—What Type of Instrument Is a TIA and What Statutory Authorities Does It Use?

A. A TIA may be either a type of cooperative agreement or a type of ''assistance transaction other than a grant or cooperative agreement,'' depending on its patent-rights provision. It is awarded under the statutory authority of 10 U.S.C. 2358, 10 U.S.C. 2371, or both, as explained in paragraphs B through E of this Appendix and illustrated in the table below.

	The TIA's provision complies with Bayh-Dole	The TIA's patent provision varies from what patent is possible under Bayh-Dole
1. The TIA does not include recovery of funds provision.	The TIA is a type of cooperative agreement, under 10 U.S.C. 2358(b)(1).	The TIA is a type of assistance transaction other than a grant or cooperative agreement, under 10 U.S.C. 2371.
2. The TIA includes recovery of funds provision	The TIA is a type of cooperative agreement, under 10 U.S.C. 2358(b)(1). It uses recovery of funds authority of 10 U.S.C. 2371.	The TIA is a type of assistance transaction other than a grant or cooperative agreement, under 10 U.S.C. 2371. It also uses the recovery of authority of funds 10 U.S.C. 2371.

B. A TIA is a type of cooperative agreement whenever its patent-rights provision complies with the Bayh-Dole statute (Chapter 18 of Title 35, U.S.C.), as shown in the preceding table. The authority to award the TIA is 10 U.S.C. 2358, in addition to any program-specific statute that may provide authority to award cooperative agreements. The TIA also may use the authority of 10 U.S.C. 2371 to include a recovery of funds provision that requires the recipient, as a condition for receiving support under the agreement, to make payments to the Department of Defense or other Federal agency.

C. A TIA becomes a type of assistance transaction other than a grant or cooperative agreement when its patent-rights provision is less restrictive than is possible under Bayh-Dole. The authority to award the instrument is 10 U.S.C. 2371, as well as any program-specific authority to provide assistance. Note that the agreements officer's judgment that the execution of the research project warrants a less restrictive patent provision than is possible under Bayh-Dole is sufficient to satisfy the statutory condition in 10 U.S.C. 2371 for use of an assistance transaction other than a cooperative agreement or grant (i.e., that it is not feasible or appropriate to use a standard grant or cooperative agreement to carry out the project). The TIA also may include a recovery of funds provision, as authorized by 10 U.S.C. 2371.

D. From a practical point of view, an agreements officer need not decide while he or she is negotiating the terms and conditions with the recipient whether a TIA is a cooperative agreement or an assistance transaction other than a grant or cooperative agreement. The agreements officer must make that decision when the agreement is finalized, based upon a comparison of the patent provision with what is required by Bayh-Dole.

E. In making that comparison, the agreements officer should consult with legal counsel and remember that most Bayh-Dole requirements apply only to small business firms and nonprofit organizations (note that a consortium that is not formally incorporated is neither a small business firm nor a nonprofit organization). There are only two requirements of Bayh-Dole, in 35 U.S.C. 202(c)(4) and 203 that directly apply to cooperative agreements with other than small business firms and nonprofit organizations. A 1984 amendment to Bayh-Dole, at 35 U.S.C. 210(c), makes those two portions apply. The 1984 amendment otherwise states that Bayh-Dole does not preclude agencies from complying with a 1983 Presidential Statement of Government Patent Policy (incorporated by reference in Executive Order 12591). The President in that statement authorized Federal agencies to tailor cooperative agreements with for-profit firms other than small businesses, in ways that would waive rights of the Government or obligations of the performer under Bayh-Dole, if they determined that:

1. ''The interests of the United States and the general public will be better served thereby as, for example, where this is necessary to obtain a uniquely or highly qualified performer; or''

2. ''The award involves co-sponsored, cost sharing, or joint venture research and development, and the performer, co-sponsor or joint venturer is making substantial contribution of funds, facilities or equipment to the work performed under the award.''

Appendix C to Part 37—What is the Desired Coverage for Periodic Audits of For-Profit Participants to be Audited by IPAs?

You may provide the following guidance to a for-profit participant and its IPA on the desired coverage of periodic audits.

Coverage of Independent Audits of For-Profit Firms

Table of Contents

Part 1. General Information
What is the purpose of this document?
Why does the Federal Government need an audit?
Can the audit be integrated with the regular audit of a firm's financial statements?
What are the objectives of the audit?
What is the source of the requirement for the audit?
What should the IPA do if he or she finds that the Defense Contract Audit Agency is performing audits of the firm?
Part 2. Audit Objectives and Compliance Requirements
A. Allowable Costs
What is the objective of this portion of the audit?
What standards or cost principles determine the costs that are allowable as charges to the award?
What compliance requirements for the allowability of costs should the audit address?
B. Cost Sharing
What is the objective of this portion of the audit?
What are the compliance requirements for cost sharing?
C. Financial Reporting
What are the objectives of this portion of the audit?
What are the compliance requirements for financial reporting?
D. Equipment and Real Property Management
Is a review of a firm's property management system usually required?
What are the objectives of the review?
What are the compliance requirements for Federally owned property and for equipment or real property purchased under DoD awards?
E. Program Income
Is an audit of program income usually required?
What is program income?
What is the objective of this portion of the audit?
What are the applicable standards for program income?

Part 1. General Information

What Is the Purpose of This Document?

This document provides guidance for an independent public accountant (IPA) who is asked by a for-profit firm to conduct an audit of its systems, due to the firm's having received a technology investment agreement from the Department of Defense (DoD).

Why Does the Federal Government Need an Audit?

Federal officials are accountable to the public for the resources provided to carry out Government programs. Financial auditing contributes to accountability by providing an independent assessment to assure that recipients are handling Government funds properly.

Can the Audit Be Integrated With the Regular Audit of a Firm's Financial Statements?

Yes, the intent is to cause the minimum possible disruption to the firm's activities, so the IPA is encouraged to do the needed transaction sampling for DoD awards as part of the regularly scheduled audit of the firm's financial statements. In some cases, it may be even more efficient and economical to separately audit the individual DoD awards, and the firm may elect to have the IPA do so.

What are the Objectives of the Audit?

The auditor is to determine and report on whether:

1. The firm has an internal control structure that provides reasonable assurance that it is managing DoD awards in compliance with the award terms and conditions, including applicable Federal laws and regulations.
2. Based on a sampling of DoD award expenditures, the firm has complied with award terms and conditions, including applicable Federal laws and regulations, that may have a direct and material effect on DoD awards.

What Is the Source of the Requirement for the Audit?

The source of the requirement stated in the award document stems from sections 37.640 through 37.660 of 32 CFR part 37, which is part 37 of the DoD Grant and Agreement Regulations (DoDGARs).

What Should the IPA Do If He or She Finds That the Defense Contract Audit Agency is Performing Audits of the Firm?

The IPA should consult with officials of the firm to ensure that:

1. DoD agreements officers were aware of the DCAA audit presence at the time they made awards; and
2. The DoD agreements authorize the IPA to perform the audit, rather than requiring that the DCAA do so. If the IPA is authorized to perform the audit, he or she must consider the nature, timing, and extent of his or her own auditing procedures, to avoid unnecessary duplication of the DCAA effort.

Part 2. Audit Objectives and Compliance Requirements

A. Allowable Costs

What Is the Objective of This Portion of the Audit?

The objective is to determine, by testing a sample of transactions, whether the firm complied with the requirements concerning allowability of costs charged to DoD awards.

What Standards or Cost Principles Determine the Costs That Are Allowable as Charges to the Award?

Each technology investment agreement should specify the standards or cost principles that the for-profit firm is to use to determine the costs that it is allowed to charge to that award. While the TIA may specify use of the for-profit cost principles in the Federal Acquisition Regulation (FAR, at 48 CFR part 31) and Defense FAR Supplement (DFARS, at 48 CFR part 231), it more likely will specify an alternative standard. The minimum standard in the latter case is that Federal funds and the firm's cost sharing contributions will be used only for costs that a reasonable and prudent person would incur in carrying out the research project contemplated by the agreement.

What Compliance Requirements For Allowability of Costs Should the Audit Address?

For a firm that is subject to the cost principles in the FAR and DFARS, the IPA should determine and report on whether costs charged to DoD awards are in compliance with those cost principles and indirect cost rates are applied in accordance with approved rate agreements.

For a firm that is subject to alternative standards that may be used for a TIA, the IPA should determine and report on whether costs charged to the DoD awards are:

1. Necessary and reasonable for the performance of the research projects supported by the awards, or for related administration. Generally, elements of cost that appropriately are charged are those identified with research and development activities under the Generally Accepted Accounting Principles (see Statement of Financial Accounting Standards Number 2, ''Accounting for Research and Development Costs,'' October 1974).
2. Allocable to the research projects (i.e., costs are charged to DoD projects in a manner that is in accordance with the benefits the projects received).
3. Given consistent treatment with costs allocated to the firm's other research and development activities (e.g., activities supported by the firm itself or by non-Federal sponsors), through application of Generally Accepted Accounting Principles appropriate to the circumstances.
4. In conformance with any limitations in the award documents or regulations that they cite (e.g., any restrictions on types or amounts of costs, or requirements for prior approval of DoD agreements officers).
5. Supported by appropriate documentation in the firm's records. The documentation may be in electronic form.

B. Cost Sharing

What Is the Objective of This Portion of the Audit?

The objective is to determine, by testing a sample of cost sharing contributions, whether the firm made the contributions that the agreements required.

What Are the Compliance Requirements for Cost Sharing?

The provisions of the award documents will specify requirements for the firm's cost sharing, which may be contributions of a specified amount or a percentage of total project costs. The cost sharing may be in the form of allowable costs incurred or in-kind contributions (including third-party in-kind contributions).

The values of the firm's contributions are determined in accordance with sections 37.530 through 37.555 of 32 CFR part 37, which is part 37 of the DoDGARs.

C. Financial Reporting

What Are the Objectives of This Portion of the Audit?

The primary objective is to determine whether the firm's financial reports for DoD awards:

1. Fairly and completely represent the expenditures and status of resources for projects supported by those awards; and
2. Are supported by applicable accounting records and the accounting basis used (e.g., cash or accrual).

What Are the Compliance Requirements for Financial Reporting?

The agreements will specify the frequency and content of the financial reports. They may specify the use of standard forms (e.g., the Standard Form 269 or 269A, ''Financial Status Report,'' or Standard Form 272, ''Report of Federal Cash Transactions). Alternatively, the agreements may specify an equivalent approach of periodic reports, and the reports may include information on both programmatic and business status. The requirements are in section 37.880 of 32 CFR part 37, which is part 37 of the DoDGARs.

Each financial report (and the business portion of any report that also has programmatic information) will contain at least summarized details on the status of resources (Federal funds and any non-Federal cost sharing that the agreements require), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award; explain any major deviations from these schedules; and discuss actions that will be taken to address the deviations.

D. Equipment and Real Property Management

Is a Review of a Firm's Property Management System Usually Required?

No, the IPA needs to review the property management system only if:

1. There is Federally owned property associated with the award; or
2. The firm charged the full purchase price of any equipment or real property as project

costs (i.e., to Federal funds or the firm's funds that are counted toward required cost sharing); and

3. The award under which the property was purchased provides for a continuing Federal interest in the property.

Note that the IPA generally will not need to review the property management system because most DoD awards will not have Federally owned property associated with them and will allow the firm to charge to the project only depreciation or use charges for real property or equipment.

What Are the Objectives of the Review?

The objectives are to determine whether the firm:

1. Obtained the necessary prior approval for the equipment or real property purchase from the grants officer or agreements officer.

2. Keeps proper records for equipment and adequately safeguards and maintains equipment.

3. Handles disposition or encumbrance of equipment or real property acquired under DoD awards in accordance with the applicable requirements.

What Are the Compliance Requirements for Federally Owned Property and for Equipment or Real Property Purchased Under DoD Awards?

To protect the Federal interest in property, the DoD Grant and Agreement Regulations include standards for the firm's property management, use, and disposition, as shown in this table:

If the property is * * *	Then the property management standards for the for-profit firm are in * * *
Real property or equipment purchased under a TIA,	Section 37.685 of 32 CFR part 37
Federally owned property.	Section 37.695 of 32 CFR part 37.

Note that a for-profit firm may include the full acquisition cost of real property or equipment as a charge to the project only with the prior approval of the grants officer or the agreements officer. The title to the real property or equipment vests conditionally in the for-profit firm upon acquisition, and there is a continuing Federal interest in the property unless an awarding office has statutory authority to do otherwise and elects to use that authority for a particular award. The Federal Government recovers its interest in the property through the disposition process at the project's end.

E. Program Income

Is An Audit of Program Income Usually Required?

No, most awards will not involve any program income.

What Is Program Income?

Program income is gross income earned by the recipient that is generated by a supported activity or earned as a result of the award. For example, if the purpose of an award is to support the firm's delivery of services and the firm collects fees for doing so, those fees are program income. As another example, if samples of materials or biological specimens are generated as a result of a supported research effort, and the firm sells samples to other research organizations, the proceeds of those sales would be program income. If authorized by the terms and conditions of the award costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

What Is the Objective of This Portion of the Audit?

The objective is to determine whether program income is correctly recorded and used in accordance with the award terms and applicable standards.

What Are the Applicable Standards for Program Income?

The standards for program income are in section 37.835 of 32 CFR part 37, which is part 37 of the DoDGARs.

Appendix D to Part 37—What Common National Policy Requirements May Apply and Need to Be Included in TIAs?

Whether your TIA is a cooperative agreement or another type of assistance transaction, as discussed in appendix B to this part, the terms and conditions of the agreement must provide for recipients' compliance with applicable Federal statutes and regulations. This appendix lists some of the more common requirements to aid you in identifying ones that apply to your TIA. The list is not intended to be all-inclusive, however, and you may need to consult legal counsel to verify whether there are others that apply in your situation (e.g., due to a provision in the appropriations act for the specific funds that you are using or due to a statute or rule that applies to a particular program or type of activity).

A. Certifications

Three requirements that apply to all TIAs currently require you to obtain a certification at the time of proposal. They are:

1. Requirements concerning debarment and suspension in a Governmentwide common rule that the DoD has codified at subparts A through E of 32 CFR part 25. They apply to all nonprocurement transactions.

2. Requirements concerning drug-free workplace in a Governmentwide common rule that the DoD has codified at subpart F of 32 CFR part 25. They apply to all financial assistance.

3. Prohibitions concerning lobbying in a Governmentwide common rule that the DoD has codified at 32 CFR part 28. They apply to all financial assistance.

Appendix A to 32 CFR part 22 includes sample provisions that you may use, to have proposers incorporate the certifications by reference into their proposals. That appendix also has information on the sources of the requirements.

B. Assurances That Apply to all TIAs

DoD policy is to use certifications, as described in the preceding paragraphs, only for national policy requirements that specifically require them. The usual approach to communicating other national policy requirements to recipients is to incorporate them as award terms or conditions, or assurances. Appendix B to 32 CFR part 22 lists national policy requirements that commonly apply to grants and cooperative agreements. It also has suggested language for assurances to incorporate the requirements in award documents. Of those requirements, the following four apply to all TIAs:

1. Prohibitions on discrimination on the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*). These apply to all financial assistance. They require recipients to flow down the prohibitions to any subrecipients performing a part of the substantive research program (as opposed to suppliers from whom recipients purchase goods or services). For further information, see item a. under the heading ''Nondiscrimination'' in appendix B to 32 CFR part 22.

2. Prohibitions on discrimination on the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*). They apply to all financial assistance and require flow down to subrecipients. For further information, see item d. under the heading ''Nondiscrimination'' in appendix B to 32 CFR part 22.

3. Prohibitions on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). They apply to all financial assistance and require flow down to subrecipients. For further information, see item e.1. under the heading ''Nondiscrimination'' in appendix B to 32 CFR part 22.

4. Preferences for use of U.S.-flag air carriers in the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), which apply to uses of U.S. Government funds.

C. Other Assurances

Additional requirements listed in appendix B to 32 CFR part 22 may apply in certain circumstances, as follows:

1. If construction work is to be done under a TIA or its subawards, it is subject to the prohibitions in Executive Order 11246 on discrimination on the basis of race, color, religion, sex, or national origin. For further information, see item b. under the heading ''Nondiscrimination'' in appendix B to 32 CFR part 22.

2. If the research involves human subjects or animals, it is subject to the requirements in item a. or b., respectively, under the heading ''Live organisms'' in appendix B to 32 CFR part 22.

3. If the research involves actions that may affect the environment, it is subject to the National Environmental Policy Act, which is item b.1. under the heading ''Environmental Standards'' in appendix B to 32 CFR part 22. It also may be subject to one or more of the other requirements in items b.2 through b.6. under that heading, which concern flood-prone areas, coastal zones, coastal barriers, wild and scenic rivers, and underground sources of drinking water.

4. If the project may impact a historic property, it is subject to the National Historic

Preservation Act of 1966 (16 U.S.C. 470, *et seq.*), as described under the heading ''National Historic Preservation'' in appendix B to 32 CFR part 22.

Appendix E to Part 37—What Provisions May a Participant Need To Include When Purchasing Goods or Services Under a TIA?

A. As discussed in § 37.705, you must inform recipients of any national policy requirements that flow down to their purchases of goods or services (e.g., supplies or equipment) under their TIAs. Note that purchases of goods or services differ from subawards, which are for substantive research program performance.

B. Appendix A to 32 CFR part 34 lists seven national policy requirements that commonly apply to firms' purchases under grants or cooperative agreements. Of those seven, two that apply to all recipients' purchases under TIAs are:

1. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).* A contractor submitting a bid to the recipient for a contract award of $100,000 or more must file a certification with the recipient that it has not and will not use Federal appropriations for certain lobbying purposes. The contractor also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. For further details, see 32 CFR part 28, the DoD's codification of the Governmentwide common rule implementing this amendment.

2. *Debarment and suspension.* Recipients may not make contract awards that exceed the simplified acquisition threshold (currently $100,000) and certain other contract awards may not be made to parties listed on the General Services Administration (GSA) ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs. The GSA list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and parties declared ineligible under statutory or regulatory authority other than Executive Orders 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235). For further details, see subparts A through E of 32 CFR part 25, which is the DoD's codification of the Governmentwide common rule implementing Executive Orders 12549 and 12689.

C. One other requirement applies only in cases where construction work is to be performed under the TIA with Federal funds or recipient funds counted toward required cost sharing:

1. *Equal Employment Opportunity.* Although construction work should happen rarely under a TIA, the agreements officer in that case should inform the recipient that Department of Labor regulations at 41 CFR 60–1.4(b) prescribe a clause that must be incorporated into construction awards and subawards. Further details are provided in appendix B to part 22 of the DoDGARs (32 CFR part 22), in section b. under the heading ''Nondiscrimination.''

[FR Doc. 02–10280 Filed 4–29–02; 8:45 am]

BILLING CODE 5001–08–P

Federal Register

Tuesday,
April 30, 2002

Part V

Environmental Protection Agency

40 CFR Part 97

Section 126 Rule: Revised Deadlines; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[FRL–7203–2]

Section 126 Rule: Revised Deadlines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's action, EPA is revising the compliance date and other related dates for sources subject to a final rule published on January 18, 2000, known as the Section 126 Rule. The EPA promulgated the rule in response to petitions submitted by four Northeastern States under section 126 of the Clean Air Act (CAA) for the purpose of mitigating interstate transport of nitrogen oxides (NO_X) and ozone. Nitrogen oxides are one of the main precursors of ground-level ozone pollution. The Section 126 Rule requires electric generating units (EGUs) and non-electric generating units (non-EGUs) located in 12 States and the District of Columbia to reduce their NO_X emissions through a NO_X cap-and-trade program.

Originally, EPA harmonized the Section 126 Rule with a related ozone transport rule, known as the NO_X State implementation plan call (NO_X SIP Call), by establishing the same compliance date, May 1, 2003. A court action subsequently delayed the NO_X SIP Call compliance deadline until May 31, 2004. More recently, on August 24, 2001, the court temporarily tolled (suspended) the Section 126 Rule compliance date for EGUs pending EPA's resolution of an issue remanded by the court related to EGU growth factors. On April 23, 2002, EPA issued its response to the growth factor remand. That action reactivated the compliance period for EGUs after nearly a year delay. Therefore, with this final rule, EPA is resetting the EGU compliance date and other related dates, such as the monitoring certification date. The EPA is also resetting the dates for non-EGU sources to match the new dates for EGUs. The new compliance date is May 31, 2004. In general, other related dates are extended by one year from the original deadlines. Today's rule once again aligns the Section 126 Rule with the NO_X SIP Call.

DATES: This final rule is effective April 30, 2002.

ADDRESSES: Documents relevant to this action are available for inspection at the Docket Office, located at 401 M Street SW, Room M–1500, Washington, DC 20460, between 7:30 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions concerning today's action should be addressed to Carla Oldham, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, 4930 Old Page Road, Research Triangle Park, NC, 27711, telephone (919) 541–3347, e-mail at *oldham.carla@epa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Related Information

The official record for the Section 126 Rule, as well as the public version, has been established under docket number A–97–43. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 7:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address in **ADDRESSES** at the beginning of this document. In addition, the **Federal Register** rulemaking actions and associated documents are located at *http://www.epa.gov/ttn/rto/126*.

The EPA has issued a separate rule on NO_X transport entitled, ''Findings of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' (known as the NO_X SIP Call). The rulemaking docket for the NO_X SIP Call (Docket No. A–96–56) contains information and analyses that EPA has relied upon in the section 126 rulemaking, and hence documents in that docket are part of the rulemaking record for this rule. Documents related to the NO_X SIP call rulemaking are available for inspection in docket number A–96–56 at the address and times given above.

Outline

I. What is the Background on the Relationship Between the Section 126 Rule and the NO_X SIP Call?
A. How Did EPA Originally Harmonize the Section 126 Rule and the NO_X SIP Call?
B. How Did Court Actions Affect the Harmonization of the Section 126 Rule and the NO_X SIP Call?
1. Court Actions on the NO_X SIP Call
2. Court Actions on the Section 126 Rule
II. What is EPA's Response to the Court Remand on EGU Growth Factors?
III. What are the New Deadlines for the Section 126 Rule Federal NO_X Budget Trading Program?
A. What is the Revised Compliance Date?
1. EGUs
2. Non-EGUs
B. What Are the Other Revised Dates Related to the Compliance Date?
1. Submission of NO_X Budget Permit Applications.
2. Timing Requirements for NO_X Allowance Allocations.
3. Compliance Supplement Pool.
4. Recordation of NO_X Allowance Allocations.
5. Compliance—Deduction of Banked Allowances.
6. Monitoring.
C. What Are the Dates that EPA is Not Changing?
1. Monitoring and Reporting Deadlines for Early Reduction Credits.
2. Other Miscellaneous Dates
IV. What are the Rulemaking Procedures?
V. What is the Future Rulemaking on the Section 126 Rule Withdrawal Provision?
VI. What are the Administrative Requirements?
A. Executive Order 12866: Regulatory Planning and Review
B. Unfunded Mandates Reform Act
C. Executive Order 13132: Federalism
D. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
E. Regulatory Flexibility Act
F. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
G. National Technology Transfer and Advancement Act
H. Paperwork Reduction Act
I. Executive Order 13211: Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
J. Judicial Review
K. Congressional Review Act

I. What Is the Background on the Relationship Between the Section 126 Rule and the NO_X SIP Call?

A. How Did EPA Originally Harmonize the Section 126 Rule and the NO_X SIP Call?

In the past several years, EPA has been engaged in two separate rulemakings to address the interstate ozone transport problem in the eastern half of the United States. These rules, known as the NO_X SIP Call and the Section 126 Rule, both require reductions in NO_X emissions, which are precursors to ground-level ozone formation.

On October 27, 1998 (63 FR 57356), EPA promulgated the NO_X SIP Call thereby requiring 22 Eastern States and the District of Columbia to reduce statewide NO_X emissions to a specified level. The rule established dates by which the States must submit and implement their NO_X reduction plans. Originally, EPA established the compliance date as May 1, 2003. The primary statutory provision for this rule is CAA section 110(a)(2)(D)(i), under

which, in general, each SIP is required to include provisions to assure that sources within the State do not emit pollutants in amounts that significantly contribute to nonattainment or interfere with maintenance problems downwind.

In 1997, while EPA was in the process of developing the NO_X SIP Call, eight Northeastern States submitted petitions under section 126 of the CAA seeking to mitigate significant interstate transport of NO_X and ozone. Section 126 refers to State obligations under CAA section 110(a)(2)(D)(i) as does the NO_X SIP Call. Section 126 authorizes a State to request EPA to make a finding that any major source or group of stationary sources in upwind States are significantly contributing to nonattainment, or interfering with maintenance, in the petitioning State. If EPA makes such a finding, EPA is authorized to establish Federal emission limits for the affected sources. The petitions requested that EPA make such findings for EGUs and other industrial sources in about 30 States.

On May 25, 1999 (64 FR 28250), EPA issued a final rule on the section 126 petitions. The EPA determined that large EGUs and large industrial boilers and turbines (non-EGUs) in 12 States and the District of Columbia were significantly contributing to nonattainment problems in four of the petitioning States under the 1-hour ozone national ambient air quality standard. The Section 126 Rule overlaps considerably with the NO_X SIP Call. Both the section 126 petitions and the NO_X SIP Call were based on much the same set of facts regarding the same pollutants. All of the sources affected by the Section 126 Rule are located in States that are covered by the NO_X SIP Call.

When EPA issued the May 25, 1999 Section 126 Rule, there was an existing requirement under the NO_X SIP Call for States to reduce their NO_X emissions and an explicit and expeditious schedule to do so. Therefore, EPA was able to coordinate, or harmonize, the Section 126 Rule with the NO_X SIP Call. The EPA established the same compliance date, May 1, 2003 for both rules. In addition, EPA concluded that it was appropriate to structure its action on the section 126 petitions to give a State the opportunity to address its NO_X transport first under the NO_X SIP Call before EPA would directly regulate sources in the State under the Section 126 Rule. Under this approach, EPA gave upwind States an opportunity to address the ozone transport problem themselves, but did not delay implementation of the NO_X transport remedy beyond May 1, 2003. Thus, in the May 25, 1999 Section 126 Rule, EPA made technical determinations as to which sources were significantly contributing but deferred making the Section 126 findings, which would trigger the control requirements, as long as States and EPA stayed on track to meet the NO_X SIP Call obligations. Where a State submitted and EPA approved a NO_X SIP fully meeting the NO_X SIP Call, the Section 126 Rule for sources in that State would automatically be withdrawn. (See 64 FR 28271–28274; May 25, 1999). Therefore, in this particular context in which EPA promulgated the NO_X SIP Call and acted on the section 126 petitions within the same time frame, the Federal Section 126 Rule would not go into place unless States failed to control their NO_X transport. This was a practical way to address the overlap between the actions that would be required under the NO_X SIP Call and under the rulemaking on the section 126 petitions. The basis for harmonizing the two rules and the interplay of the underlying statutory provisions are discussed at length in the May 25, 1999 final rule.

B. How Did Court Actions Affect the Harmonization of the Section 126 Rule and the NO_X SIP Call?

1. Court Actions on the NO_X SIP Call

The NO_X SIP Call originally required States to submit their NO_X SIPs to EPA by September 30, 1999. On May 25, 1999, in response to a request by States challenging the NO_X SIP Call, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit or the court) issued a stay of the SIP submission deadline pending further order of the court. *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir., 2000), *cert. denied,* 121 S.Ct. 1225 (2001), No. 98–1497 order (May 25, 1999) (order granting stay in part). Inasmuch as the compliance date is linked with the SIP submission date, the stay created uncertainty regarding the compliance date. Because there was no longer a schedule for the NO_X SIP Call, EPA no longer had a basis for deferring action under the Section 126 Rule. Therefore, in a final rule published on January 18, 2000, EPA moved forward to make the findings and activate the control requirements under the Section 126 Rule (65 FR 2674).

However, the Section 126 Rule continued to contain a provision whereby the section 126 requirements would be automatically withdrawn for sources in a State if EPA approved a State's SIP that provided for the NO_X SIP Call emission reduction requirements by the May 1, 2003 compliance date.

On March 3, 2000, a panel of the D.C. Circuit largely upheld the NO_X SIP Call in *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir., 2000), *cert. denied,* 121 S. Ct. 1225 (2001). Subsequently, on April 11, 2000, EPA filed a motion with the court to lift the stay of the SIP submission date. In response, on June 22, 2000, the court ordered that EPA allow the States 128 days from the June 22, 2000 date of the order to submit their SIPs. Therefore, SIPs in response to the NO_X SIP Call were due October 30, 2000.[1]

On August 30, 2000, the D.C. Circuit ordered that the deadline for full implementation of the NO_X SIP Call be extended from May 1, 2003 to May 31, 2004. This extension was calculated in the same manner used by the court in extending the deadline for SIP submissions, so that sources in States subject to the NO_X SIP Call would have 1,309 days for implementing the SIP as provided in the original NO_X SIP Call. This action was in response to a motion filed by the industry/labor petitioners.

As a result of this court order, the NO_X SIP Call then had a later compliance date than the Section 126 Rule. Thus, where States submitted SIPs with the new 2004 deadline, the Section 126 Rule would have gone into place for a year before the State began controlling its NO_X transport under its implementation plan.

2. Court Actions on the Section 126 Rule

On May 15, 2001, the court ruled on a number of challenges to EPA's Section 126 Rule. *See Appalachian Power* v. *EPA,* 249 F.3d 1032 (D.C. Cir. 2001). While the court's decision largely upheld the Section 126 Rule, the Court remanded two issues to EPA. The court directed EPA to: (1) properly justify either the current or a new set of EGU heat input growth rates to be used in estimating State heat input in 2007, and (2) either properly justify or alter its categorization of cogenerators that sell electricity to the electric grid as EGUs. The EPA is responding to the remand related to the categorization of cogenerators in a rulemaking that was proposed on February 22, 2002 (67 FR 8396). The EPA's response to the growth factor remand is discussed below in section II.

On August 24, 2001, the D.C. Circuit Court tolled (suspended) the compliance period for EGUs under the Section 126 Rule as of the May 15, 2001 decision pending EPA's response to the

[1] October 30, 2000 was the first business day following the expiration of the 128-day period.

growth factor remand. *Appalachian Power* v. *EPA,* 249 F.3d 1052 (D.C. Cir 2001), Order (August 24, 2001). The temporary suspension of the compliance period created uncertainty regarding the ultimate compliance date and also how other related dates in the Section 126 Rule would be affected. Because of the time needed to fully respond to the growth factor remand, the tolling of the compliance period has resulted in a delay in the implementation of the Section 126 Rule until the 2004 ozone season. This has created a need for EPA to once again harmonize the Section 126 Rule with the NO_X SIP Call.

II. What Is EPA's Response to the Court Remand on EGU Growth Factors?

Over the past 8 months, EPA has been developing its response to the court remand on EGU growth factors. The EPA has reviewed information in the rulemaking record and also examined more recent data. The EPA published two notices of data availability that describe the new data and announced their availability in the rulemaking docket (66 FR 40609; August 3, 2001 and 67 FR 10844; March 11, 2002).

The EPA recently completed its response to the remand on EGU growth factors and is publishing the response in the notice section of the **Federal Register**. (See ''Notice in Response to Court Remand on NO_X SIP Call and Section 126 Rule''.) The response to the remand notice explains why the growth rates were reasonable, based on the information that was available to EPA at the time EPA promulgated the Section 126 Rule and confirmed by new information on activity to date.

The signature of EPA's response to the EGU growth factor remand constitutes EPA's resolution of the issue. Therefore, in accordance with the August 24, 2001 court ruling, the compliance period for EGUs is no longer tolled (suspended) as of the April 23, 2002 signature date of the response to the remand.

III. What are the New Deadlines for the Section 126 Rule Federal NO_X Budget Trading Program?

The EPA promulgated the Federal NO_X Budget Trading program under 40 CFR part 97 as the control remedy for sources affected by the Section 126 findings (65 FR at 2727; January 18, 2000). A cap-and-trade program is the most cost-effective approach for achieving the necessary emissions reductions. The trading program sets an emission limitation and compliance schedule for the sources (known as NO_X budget units). The emission limitation for each unit is the requirement that the tons of NO_X emitted during the ozone season control period (May 1—September 30) cannot exceed the amount authorized by the NO_X allowances that the unit holds. Allowances are allocated to units subject to the program, and the total number of allowances allocated to all such units for each control period is fixed, or ''capped,'' at a specified level. The compliance schedule is set by establishing a deadline by which units must begin to comply with the requirement to hold allowances sufficient to cover emissions. Part 97 includes applicability, permitting, allowance, excess emissions, monitoring and reporting, opt-in, and general provisions for the trading program.

Today's final rule amends the part 97 Federal NO_X Budget Trading Program by revising the compliance date and other related dates. As discussed above, EPA is taking today's action as a result of an August 24, 2001 court decision which temporarily suspended (and as a result, delayed) the Section 126 Rule compliance date. Although the court's action affected only the compliance deadline, there are other dates in the rule for related requirements that must also be extended because they were established relative to the original compliance deadline. The new dates are discussed below and shown in the amended regulatory text. Also discussed below are a few dates that EPA is not changing. The dates being revised are summarized in Table 1. The unrevised dates are summarized in Table 2.

TABLE 1.—SECTIONS OF PART 97 CONTAINING DATES THAT EPA IS REVISING IN TODAY'S RULE

Part 97 section	Original date	Revised date
§ 97.4 Applicability	2003	2004.
§ 97.5 Retired unit exemption	May 1, 2003	May 1, 2004.
§ 97.6 Standard requirements	May 1, 2003	May 31, 2004.
§ 97.21 Submission NO_X budget permit applications	January 1, 2000	January 1, 2001
	May 1, 2003	May 31, 2004.
§ 97.41 Timing requirements for NO_X allowance allocations	2003 through 2007	2004 through 2007
	April 1, 2003	April 1, 2004.
§ 97.42 NO_X allowance allocations	Removes the word five, wherever it appears.	
§ 97.43 Compliance supplement pool	2001 or 2002	2001 through 2003.
	February 1, 2003	February 1, 2004
	2001 and 2002	2001 through 2003.
	Apri1 1, 2003	April 1, 2004.
	May 1, 2003	May 1, 2004.
	2003 or 2004	2004 or 2005.
	2004	2005.
§ 97.53 Recordation of NO_X allowance allocations	2003	2004.
	May 1, 2001	May 1, 2003.
	2004	2005.
	May 1, 2002	May 1, 2003.
	2005	2006.
	May 1, 2003	May 1, 2004.
	2006	2007.
	2004	2005.
§ 97.54 Compliance	2005	2006.
§ 97.70 General requirements	May 1, 2000	May 1, 2001.
	January 1, 2002	January 1, 2003.
	May 1, 2002	May 1, 2003.
§ 97.74 Recordkeeping and reporting	May 1, 2002	May 1, 2003.
	May 1, 2002 through June 30, 2002	May 1, 2003 through June 30, 2003.
Appendices A and B	2003–2007	2004–2007.

TABLE 1.—SECTIONS OF PART 97 CONTAINING DATES THAT EPA IS REVISING IN TODAY'S RULE—Continued

Part 97 section	Original date	Revised date
Appendix C	Removes 2003–2007.	

TABLE 2.—SECTIONS OF PART 97 CONTAINING DATES THAT ARE NOT CHANGING

Part 97—section	Item with dates that are not changing
§ 97.2 Definitions	Definition of fossil fuel fired.
§ 97.4 Applicability NO_X	budget unit and NO_X budget source descriptions.
§ 97.42 NO_X	Baselines used for allocations; allowance Dates related to allocations for control periods allocations after 2007.
§ 97.70 General Requirements	Monitoring and reporting deadlines for early reduction credits.

A. What Is the Revised Compliance Date?

For the reasons discussed below, EPA is establishing May 31, 2004 as the new compliance deadline for all sources subject to the Section 126 Rule. The compliance date is established in § 97.6(c)(3) Standard Requirements and referenced in the following sections: § 97.4(b)(4)(vi) Applicability, § 97.5(c)(5) Retired Unit Exemption, § 97.21(b) Submission of NO_X Budget permit applications, and § 97.53 Recordation of NO_X allowance allocations.

1. EGUs

When the court suspended the compliance period for EGUs (see discussion in section I.2. above), there were 21 months remaining for compliance. The EPA completed its response to the growth factor remand on April 23, 2002. That action officially reactivated the EGU compliance period as of that date. By the time the 21 months remaining expire in January 2004, the 2003 ozone season will have ended. The Section 126 Rule requires NO_X reductions only during the ozone season control period of May 1 through September 30. Thus, compliance by January 2004 would not require actual NO_X emissions reductions until May 2004. Although May 1 is the beginning of the ozone season, EPA is establishing May 31, 2004 as the compliance date for EGUs under the Section 126 Rule in order to align that date with the deadline established by the D.C. Circuit for the NO_X SIP Call. [2]

There are two primary reasons EPA believes May 31, 2004 is the appropriate compliance date. First, EPA strongly supports addressing ozone transport through State action. As discussed in section I.A., from the beginning it has been EPA's intention to coordinate the NO_X SIP Call and the Section 126 Rule because the rules were promulgated at about the same time. The EPA originally established the same compliance date for the rules, May 1, 2003. Then, where a State stayed on track to meet the NO_X SIP Call, EPA would automatically withdraw the Federal Section 126 Rule requirements before sources in that State had to comply with the rule. The EPA believes it makes sense to continue this approach because it helps provide States, affected industry, and the public with a better coordinated and simpler program for achieving these emissions reductions. (See discussion below in section V regarding EPA's upcoming rulemaking to revise the Section 126 Rule withdrawal provision.)

Second, EPA believes it would be unnecessarily complicated and confusing for EGUs to be controlled under the Section 126 Rule for just one month (May 1—May 30, 2004) and then be subject to a potentially different regime under State plans in response to the NO_X SIP Call beginning on May 31, 2004. The benefit of controls 1 month earlier would be trivial compared to the potential complexity.

2. Non-EGUs

The court's actions related to the EGU growth factors did not address the compliance deadline for non-EGUs subject to the Section 126 Rule. However, EPA is also extending the compliance deadline for non-EGUs until May 31, 2004 to match the new compliance deadline for EGUs. This is in keeping with the original Section 126 Rule which reflected the intention to regulate EGUs and non-EGUs on the same schedule. Non-EGUs are a very small portion of the total group of sources affected by the Section 126 Rule, accounting for about 5 percent of the emissions reductions. An important compliance option for these generally smaller sources is to purchase emissions credits through trading with large EGUs. The EPA believes the public is best served if the compliance date for non-EGUs is the same as for the much larger category of EGUs. The EPA's goal is to establish the most cost-effective emission control program possible and that necessarily includes trading among all affected sources. If the non-EGU controls were implemented a year earlier than the EGU controls, this would offer less compliance flexibility and would not take advantage of the more efficient outcome that would result if non-EGUs were able to trade with EGUs throughout the NO_X SIP Call region. The EPA does not believe it makes sense for this very small portion of affected sources to have to comply at an earlier date with fewer control options.

B. What Are the Other Revised Dates Related to the Compliance Date?

1. Submission of NO_X Budget Permit Applications

Section 97.21 requires the authorized account representative to submit a permit application to the permitting authority at least 18 months (or such lesser time provided by the permitting authority) before the compliance date or the date on which the NO_X Budget unit commences operation. Based on the original May 1, 2003 compliance date, the former situation resulted in a default permit application date of November 1, 2001. Because EPA is revising the compliance deadline to be May 31, 2004, the resulting new default permit application date calculates to be November 30, 2002.

For NO_X budget units that commence operation before January 1, 2001, the permit applications must be submitted by at least 18 months (or such lesser time provided by the permitting authority) before May 31, 2004. For NO_X budget units that commence operation on or after January 1, 2001, the permit applications must be submitted by at least 18 months (or such lesser time provided by the permitting authority) before the later of May 31, 2004 or the date the unit commences operation.

[2] The 2005 control season and all subsequent control seasons will begin on May 1.

2. Timing Requirements for NO_X Allowance Allocations

Section 97.41 specifies the dates by which EPA will determine the NO_X allowance allocations for given control periods. Under the Federal NO_X Budget Trading Program, EPA will update the NO_X allowance allocations every 5 years. Thus, the allocations will be the same each year for a set of 5 control periods. The EPA published the first set of allocations in Appendices A and B to part 97 (65 FR at 2751; January 18, 2000). Because the Section 126 Rule compliance date is shifting from 2003 to 2004, this first set of allocations will now apply for a 4-year period from 2004–2007 instead of the original 5-year period from 2003–2007. After the initial 4-year period, EPA will continue to determine NO_X allowance allocations in 5-year intervals—by April 1, 2005, April 1, 2010, April 1, 2015, and so forth. The first set of allocations for new units from the allocation set-aside will be determined by April 1, 2004.

The title of Appendix C to part 97 showing the trading budgets by State is changed to remove the listed years since they now will not apply until 2004 and, under §§ 97.40, 97.41, and 97.42, are used in allocating allowances for 2008 through 2012 and beyond.

The allocations and budgets for the first year of the trading program will cover a shorter compliance period because, in 2004, compliance begins on May 31 instead of May 1.

3. Compliance Supplement Pool

Section 97.43(a) originally specified that sources may request early reduction credits for certain emissions reductions made during the 2001 and 2002 control periods. These credits are allocated from the compliance supplement pool (CSP). (See 65 FR 2711; January 18, 2000.) Now that 2003 is no longer a required compliance year, reductions made in 2003 can be considered for early reductions credits. Because 2001 has passed and sources may have already, in good faith, reduced emissions during the 2001 ozone season for purposes of earning early reduction credits, EPA is not simply shifting the early reductions period by 1 year. Instead, EPA is expanding the period during which sources can earn early reductions credits to include 2001 through 2003.

Most of the remaining CSP-related deadlines in § 97.43(b) and (c) are extended by 1 year. The early reduction credit request must be submitted by February 1, 2004. After February 1, 2004, EPA will report the total amount of early reduction credits requested by sources in the State. The EPA will determine and announce the NO_X allocations by April 1, 2004 and provide an opportunity for public comment. The CSP allocations will be recorded by May 1, 2004. NO_X allowances from the CSP may be used for compliance purposes during the 2004 and 2005 ozone control periods.

However, the May 1, 2000 deadline for certification of continuous emission monitoring systems at units which are making early reductions is not changed. This is because it is necessary to establish the level of emissions in 2000, as the baseline used to determine the amount of early reductions in 2001, 2002, and 2003.

4. Recordation of NO_X Allowance Allocations

Section 97.53 establishes the timing for recording the NO_X allowance allocations in the accounts for the NO_X budget units. No deadline for recordation of the allowance allocations was established for the first year of the trading program. For later years, the rule required the allowance allocations to be recorded by the start of the ozone control period 3 years in advance of the year for which the allowances were allocated. Thus, originally the rule required the 2004 NO_X allowance allocations to be recorded by May 1, 2001 and the 2005 NO_X allowance allocations to be recorded by May 1, 2002, and so forth. Because 2004 is now the first year of the program, and because May 1, 2001 is already past, EPA is removing the deadline for recordation for the 2004 control period. The EPA will record the allowances sufficiently in advance for sources to make their compliance decisions. In addition, because the May 1, 2002 recordation deadline for the 2005 control period is only a few days away, there is not adequate time for EPA to meet that deadline. Therefore, EPA is establishing May 1, 2003 as the recordation deadline for 2005 allowance allocations. As a result, both the 2005 and 2006 NO_X allowances will be recorded by May 1, 2003.

Recordation of allocations in compliance accounts or general accounts and allocations to opt-in units addressed under § 97.53(e) will start in 2005.

5. Compliance—Deduction of Banked Allowances

The Federal NO_X Budget Trading Program includes a banking feature to allow sources to save allowances for use in later years. Banking may result in more NO_X allowances being used, and therefore more NO_X emissions, in one year than in another. Section 97.54(f) provides a flow control mechanism to limit the variability in the time of emissions by establishing a discount rate on the use of banked allowances over a certain level. Under the January 18, 2000 Section 126 Rule, flow control could not be triggered until 2005 (after the first 2 years of the program). In order to continue to allow unrestricted use of allowances during the first 2 years of the program, this date is being extended by 1 year. Therefore, flow control cannot be triggered until 2006 (i.e., after reconciliation in the 2005 compliance year).

6. Monitoring

Sections 97.70 through 74 contain the Monitoring and Reporting requirements. Under § 97.70, all the deadlines related to monitoring and reporting are extended by 1 year, except for the deadlines related to earning early reduction credits (see discussion below in section C.1.). Part 97 requires monitoring to begin the start of the ozone season 1 year before the compliance date. Therefore, sources not intending to apply for early reduction credits are now required to meet the certification and other related requirements by May 1, 2003 and begin reporting on that date. The deadline is May 1, rather than May 31, so that units will report emissions for the full control period in 2003. The heat input for the 2003 control period will be used in determining future allowance allocations under Part 97. New sources that commence operation on or after January 1, 2003, are required to meet monitoring and reporting requirements by May 1, 2003 or 90 days after the source commenced operation, whichever is later.

Section 97.74(d) sets out the deadlines for submission of quarterly reports. All deadlines are extended by 1 year.

C. What Are the Dates That EPA Is Not Changing?

1. Monitoring and Reporting Deadlines for Early Reduction Credits

Section 97.70(b)(1) establishes May 1, 2000 as the monitoring certification and reporting deadline for sources that intend to apply for early reduction credits under § 97.43. This deadline is not changing because, as discussed above in section III.B.3., EPA is not shifting by 1 year the period during which early reduction credits can be earned. The year 2001 will continue to be the first year during which early reduction credit can be earned, but now the early reductions time period is being expanded through 2003. The 2000

ozone season remains the baseline against which sources who intend to request early reduction credits must demonstrate reductions.

2. Other Miscellaneous Dates

There are several other dates in the Section 126 Rule that are not changing. These include: the 1995–1998 baseline period in § 97.42(a)(1)(i) used for initial allocations, the 2002–2004 baseline period in § 97.42(a)(1)(ii) for the next set of allocations(which is for 2008–2012), the dates related to allocations for control periods after 2007, and the dates in the definitions of fossil fuel fired and in the applicability provisions in § 97.4.

IV. What Are the Rulemaking Procedures?

The EPA is taking this action as a final rule without prior proposal and public comment because EPA finds that the Administrative Procedure Act (APA) good cause exemption to the requirement for notice-and-comment rulemaking applies here. See 5 U.S.C. 553(b)(3)(B). The EPA believes that providing for notice-and-comment rulemaking before taking this action is impracticable and contrary to the public interest because the time involved would extend beyond critical dates in the Section 126 Rule that EPA is changing.

In particular, when the court temporarily suspended the compliance date for EGUs, it did not suspend the other related dates. The other dates, such as the monitoring certification date, were established by EPA based on the specific timing of the compliance date. Therefore, substantial confusion has resulted for sources as to their obligations to meet the related deadlines. The current May 1, 2002 monitoring certification deadline is rapidly approaching. The monitoring deadline was set to be 1 year prior to the compliance date. Because the court's action effectively delayed the compliance deadline beyond 2003, similarly the monitoring date should be delayed beyond 2002. In a January 16, 2002 memorandum from John Seitz, Director of the Office of Air Quality Planning and Standards, to EPA Regional Air Directors, EPA announced that it intended to extend the deadlines that are related to the compliance date. However, the sources remain legally subject to the existing deadlines until EPA formally changes those dates. The time needed to complete notice-and-comment rulemaking to revise the dates would extend well beyond the May 1, 2002 monitoring date and would result either in sources making expenditures that are unnecessary at this time or being in violation of existing deadlines until EPA finalized the rule to extend those deadlines. Therefore, EPA believes it would be contrary to the public interest for the existing deadlines to remain in effect while EPA conducted rulemaking to extend the deadlines. In addition, sources need certainty as early as possible regarding their new compliance dates so that appropriate compliance plans and contractual agreements can be arranged. It would be impracticable to achieve the purpose of immediate clarification regarding sources' obligations, and hence, would also be contrary to the public interest, if this action were delayed by providing for prior public notice-and-comment. This rule does not change what the control requirements are for the affected sources or substantively change the Section 126 Rule in any way. It simply changes several dates by which the requirements must be met, as a result of the court's actions related to the EGU compliance date. Therefore, EPA does not believe that prior proposal is necessary.

Given the need to have the revised dates in place prior to May 1, 2002, for the reasons discussed above, EPA finds good cause to make this rule immediately effective upon publication. The EPA believes this is consistent with 5 U.S.C. 553(d)(1) and (3).

V. What Is the Future Rulemaking on the Section 126 Rule Withdrawal Provision?

As mentioned above, the Section 126 Rule includes a provision to withdraw the section 126 requirements in a State where the State is fully controlling the NO_X transport. The current Section 126 Rule withdrawal provision is based on the original compliance deadlines in the Section 126 Rule and NO_X SIP Call. This provision automatically withdraws the section 126 findings and control requirements for sources in a State if the State submits, and EPA gives final approval to, a SIP revision meeting the full NO_X SIP Call requirements, including the originally promulgated May 1, 2003 compliance deadline (40 CFR 52.34(i)). The automatic withdrawal provision does not address any other circumstances.

In particular, the withdrawal provision in its current form would not operate where a State's NO_X SIP has the new court-established May 31, 2004 NO_X SIP Call compliance deadline. Because the Section 126 Rule compliance deadline is now May 31, 2004, a NO_X SIP to pre-empt or replace the Section 126 Rule requirements would not need to be implemented until May 31, 2004. Therefore, in the future, EPA intends to conduct a rulemaking to modify the Section 126 Rule withdrawal provision to take into account the new compliance date for the Section 126 Rule. Revising the Section 126 Rule withdrawal provision will avoid the potential overlap of Federal requirements under the Section 126 Rule and State requirements under the NO_X SIP Call.

VI. What Are the Administrative Requirements?

A. Executive Order 12866: Regulatory Planning and Review

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, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under Executive Order 12866, this final action is not a ''significant regulatory action'' and is therefore not subject to review by OMB. This rule does not create any additional impacts beyond what were promulgated in the January 2000 Rule. This rule also does not raise novel legal or policy issues. Therefore, EPA believes that this action is not a ''significant regulatory action.''

B. 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, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rules with ''Federal mandates'' that may result in the expenditure by

State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. A ''Federal mandate'' is defined to include a ''Federal intergovernmental mandate'' and a ''Federal private sector mandate'' (2 U.S.C. 658(6)). A ''Federal intergovernmental mandate,'' in turn, is defined to include a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' (2 U.S.C. 658(5)(A)(i)), except for, among other things, a duty that is ''a condition of Federal assistance'' (2 U.S.C. 658(5)(A)(I)). A ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector,'' with certain exceptions (2 U.S.C. 658(7)(A)).

The EPA has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more for either State, local, or tribal governments in the aggregate, or for the private sector. This Federal action does not impose any new requirements, as discussed above. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this action.

Because the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute (see section IV of this preamble, it is not subject to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

C. Executive Order 13132: Federalism

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'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

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. The 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.

This 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. Today's rule imposes no additional burdens beyond those imposed by the January 2000 Rule. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed above, today's action imposes no new requirements that would impose compliance burdens beyond those that would already apply under the January 2000 rule. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (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.

Today's rule does not create new requirements for small entities or other sources. Instead, this action extends the compliance dates for sources subject to the January 2000 rule as a result of court actions. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Because the Agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute (see section IV of this preamble), it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

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.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because this action is not ''economically significant'' as defined under Executive Order 12866 and the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Transfer and Advancement Act of 1995

(''NTTAA,'' Pub. L. 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.

The National Technology Transfer and Advancement Act of 1997 does not apply because today's action does not impose any new technical standards. This action extends deadlines for sources subject to the January 2000 Rule, as the result of court actions.

H. Paperwork Reduction Act

Today's action does not impose any new information collection request requirements. Therefore, an information collection request document is not required.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Today's action does not impose any new regulatory requirements.

J. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

For the reasons discussed in the May 25, 1999 final rule (64 FR 28250), the Administrator determined that final action regarding the section 126 petitions is of nationwide scope and effect for purposes of section 307(b)(1). Thus, any petitions for review of final actions regarding the section 126 rulemaking must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

K. Congressional Review Act

The Congressional Review Act (CRA), 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 of the CRA provides an exception to this requirement. For any rule for which an agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest, the rule may take effect on the date set by the Agency. The 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). As EPA is finding good cause to promulgate this rule without prior notice and comment, this rule will be effective April 30, 2002.

List of Subjects in 40 CFR Part 97

Administrative practice and procedure, Air pollution control, Intergovernmental Relations, Nitrogen oxides, Ozone, Reporting and record keeping requirements.

Dated: April 23, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 97—FEDERAL NO_X BUDGET TRADING PROGRAM

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

Authority: 42 U.S.C. 7401, 7403, 7426, and 7601.

§ 97.4 [Amended]

2. In § 97.4 paragraphs (b)(4)(vi)(A) and (b)(4)(vi)(B) are amended by revising the date ''2003'' to read ''2004'', wherever it appears.

§ 97.5 [Amended]

3. In § 97.5 paragraphs (c)(5)(i) and (c)(5)(ii) are amended by revising the date ''May 1, 2003'' to read ''May 31, 2004,'' wherever it appears.

§ 97.6 [Amended]

4. In § 97.6 paragraph (c)(3) is amended by revising the date ''May 1, 2003'' to read ''May 31, 2004''.

§ 97.21 [Amended]

5. In § 97.21 paragraphs (b)(1)(i), (b)(1)(ii), (b)(2)(i), and (b)(2)(ii) are amended by revising the date ''January 1, 2000'' to read ''January 1, 2001'' and the date ''May 1, 2003'' to read ''May 31, 2004,'' wherever they appear.

§ 97.41 [Amended]

6. In § 97.41 by amending:

a. Paragraph (a) by revising the date ''2003 through 2007'' to read ''2004 through 2007''; and

b. Paragraph (d) by revising the date ''April 1, 2003'' to read ''April 1, 2004''.

§ 97.42 [Amended]

7. In § 97.42 by amending:

a. Paragraph (b) by removing the word ''five'; and

b. Paragraph (c) by removing the word ''five'.

§ 97.43 [Amended]

8. In § 97.43 by amending:

a. Paragraph (a) introductory text by revising the date ''2001 or 2002'' to read ''2001 through 2003'';

b. Paragraph (a)(4) introductory text by revising the date ''2001 or 2002'' to read ''2001 through 2003'';

c. Paragraph (a)(4)(ii) by revising the date ''February 1, 2003'' to read ''February 1, 2004'';

d. Paragraph (b)(1) by revising the date ''2001 or 2002'' to read ''2001 through 2003,'' wherever it appears;

e. Paragraph (b)(2) by revising the date ''February 1, 2003'' to read ''February 1, 2004'';

f. Paragraphs (c)(2), (c)(3), and (c)(4) by revising the date ''February 1, 2003'' to read ''February 1, 2004,'' wherever it appears;

g. Paragraphs (c)(3) and (c)(4) by revising ''2001 and 2002'' to read ''2001 through 2003,'' wherever it appears;

h. Paragraph (c)(5) by revising the date ''April 1, 2003'' to read ''April 1, 2004'';

i. Paragraph (c)(6) by revising the date ''May 1, 2003'' to read ''May 1, 2004'';

j. Paragraph (c)(7) by revising the date ''2003 or 2004'' to read ''2004 or 2005'; and

k. Paragraph (c)(8) by revising the date ''2004'' to read ''2005''.

§ 97.53 [Amended]

9. In § 97.53 by amending:

a. Paragraph (a) by revising the date ''2003'' to read ''2004'', wherever it appears;

b. Paragraph (b) by revising the date ''May 1, 2001'' to read ''May 1, 2003'' and revising the date ''2004'' to read ''2005'', wherever they appear;

c. Paragraph (c) by revising the date ''May 1, 2002'' to read ''May 1, 2003'' and revising the date ''2005'' to read ''2006'', wherever they appear;

d. Paragraph (d) by revising the date ''May 1, 2003'' to read ''May 1, 2004'' and revising the date ''2006'' to read ''2007'', wherever they appear; and

e. Paragraph (e) introductory text by revising the date ''2004'' to read ''2005''.

§ 97.54 [Amended]

10. In § 97.54 paragraph (f) is amended by revising the date ''2005'' to read ''2006''.

§ 97.70 [Amended]

11. In § 97.70 by amending:

a. Paragraph (b)(1) by revising the date ''May 1, 2000'' to read ''May 1, 2001''; and

b. Paragraphs (b)(2), (b)(3), introductory text (b)(4), (b)(5), (b)(5)(i), and (b)(6) by revising the date ''January 1, 2002'' to read ''January 1, 2003'' and revising the date ''May 1, 2002'' to read ''May 1, 2003,'' wherever they appear.

c. Paragraph (b)(3)(i) by revising the date ''May 1, 2002'' to read ''May 1, 2003.''

§ 97.74 [Amended]

12. In § 97.74 paragraphs (d)(1)(ii), (d)(1)(iii), (d)(2)(ii)(B), (d)(2)(ii)(C), and (d)(2)(ii)(D) are amended by revising the date ''May 1, 2002'' to read ''May 1, 2003'' and revising the date ''May 1, 2002 through June 30, 2002'' to read ''May 1, 2003 through June 30, 2003,'' wherever they appear.

Appendix A to Part 97 [Amended]

13. In Appendix A the table heading is amended by revising the date ''2003–2007'' to read ''2004–2007''.

Appendix B to Part 97 [Amended]

14. In Appendix B the table heading is amended by revising the date ''2003–2007'' to read ''2004–2007''.

Appendix C to Part 97 [Amended]

15. In Appendix C the table heading is amended by removing the date '', 2003–2007''.

[FR Doc. 02–10403 Filed 4–29–02; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
April 30, 2002

Part VI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Circular 2001–07; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–07; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final rules.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2001–07. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.arnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2001–07 and specific FAR case number(s). Interested parties may also visit our website at *http://www.arnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Preference for Performance-Based Contracting	2000–307	Wise
II	Revisions to Balance of Payments Program	1999–616	Davis
III	European Union Trade Sanctions	2001–002	Davis
IV	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2001–07 amends the FAR as specified below:

Item I—Preference for Performance-Based Contracting (FAR Case 2000–307)

This final rule converts the interim rule published as Item I of FAC 97–25 at 66 FR 22082, May 2, 2001, to a final rule with an amendment at FAR 7.105. The rule implements Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). The rule affects contracting officers that buy services by explicitly establishing a preference for performance-based contracts or task orders. Guidance for performance-based contracting is available at the following websites: *http://www.arnet.gov/Library/OFPP/BestPractices/, http://oamweb.osec.doc.gov/pbsc/index.html,* or *http://www.gsa.gov/Portal/content/pubs-content.jsp? content OID = 119969&contentType = 1008&PMVP = 1.*

Item II—Revisions to Balance of Payments Program (FAR Case 1999–616)

This final rule amends the FAR by removing Subpart 25.3, Balance of Payments Program, and making conforming changes to FAR Parts 13, 25, and 52. This revision will reduce administrative burdens on both the Government and the public. The FAR no longer requires contracting officers to use balance of payments procedures to evaluate foreign offers when acquiring supplies for use outside the United States that are valued at more than $100,000, but not more than $186,000, or when awarding a construction contract to be performed outside the United States and valued at less than $6,909,500. However, the Balance of Payments Program will be continued in the Department of Defense, and a Defense Federal Acquisition Regulation Supplement rule is being processed for this purpose.

Item III—European Union Trade Sanctions (FAR Case 2001–002)

This final rule revises FAR 25.1103(c)(2)(i) to specifically exclude solicitations issued and contracts awarded by DoD from the clause prescription for the use of FAR clauses 52.225–15, Sanctioned European Union Country End Products, and 52.225–16, Sanctioned European Union Country Services. This rule is a clarification of existing policy. DoD contracting officers must ensure that the clauses implementing European Union trade sanctions are not included in DoD solicitations and contracts.

Item IV—Technical Amendments

These amendments update sections and make editorial changes at FAR 12.301, 52.214–20, and 52.244–2.

Dated: April 23, 2002.

Al Matera,

Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–07 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2001–2007 are effective May 15, 2002.

Dated: April 19, 2002.

Deidre A. Lee,

Director, Defense Procurement.

Dated: April 18, 2002.

Joseph A. Neurauter,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: April 17, 2002.

Tom Luedtke,

Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 02–10368 Filed 4–29–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 7, and 37

[FAC 2001–07; FAR Case 2000–307; Item I]

RIN 9000–AJ12

Federal Acquisition Regulation; Preference for Performance-Based Contracting

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to implement Section 821 of the Floyd D. Spence National Defense Authorization Act. The FAR rule explicitly states that performance-based contracting is the preferred method for acquiring services, enumerates an order of precedence, and further clarifies the documentation required in an acquisition plan when acquiring services.

DATES: Effective Date: May 15, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208–1168. Please cite FAC 2001–07, FAR case 2000–307.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 66 FR 22082, May 2, 2001. The interim rule explicitly stated that performance-based contracting is the preferred method for acquiring services and enumerated the order of precedence established by Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). The coverage contained in the final rule is the same as that in the interim rule except that the final rule amends paragraph (b)(4) of FAR 7.105 to clarify that contracting officers must provide rationale if a performance-based contract will not be used or if a performance-based contract for services is contemplated on other than a firm-fixed price basis (see 37.102(a) and 16.505(a)(3)).

Two respondents submitted comments on the interim rule. The first comment suggested that the language changes in FAR Parts 2 and 37 in this rule should be incorporated into FAR Part 8. While the Councils do not believe added references in Part 8 are needed as a general matter with respect to this rulemaking, revisions to Subpart 8.4 regarding use of the Federal Supply Schedules for the acquisition of services are under development and references to Part 37 policies on performance-based service contracting will be considered for incorporation as appropriate as part of that regulatory initiative.

The second comment stated that the FAR Part 2 definition for performance-based contracting is internally inconsistent because it calls for requirements to be set forth in clear, specific, and objective terms with measurable outcomes but also dictates the use of ''broad and imprecise'' statements of work. The Councils disagree. As revised, the definition of performance-based contracting, consistent with section 821(e) of the Defense Authorization Act for FY 01, explains what performance-based contracting should not include (*e.g.,* broad and imprecise work statements, a structure centering on the manner that the work should be performed), and what it should contain (*e.g.,* a work statement that has clear, specific, and objective terms with measurable outcomes).

This commenter further suggested that the regulations do not need to be changed, but acquisition personnel need to be trained in developing performance-based requirements. The regulatory changes in this rule are not meant as a substitute for training that will enhance the knowledge and skills of acquisition personnel in performance-based contracting. Guidance is available at the following websites:

http://www.arnet.gov/Library/OFPP/BestPractices/,
http://oamweb.osec.doc.gov/pbsc/index.html, or
http://www.gsa.gov/Portal/content/pubscontent.jsp?contentOID=119969&contentType=1008&PMVP=1.

Finally, the Office of Federal Procurement Policy has advised the FAR Council that it is establishing an inter-agency group to ensure a common understanding among the agencies regarding performance-based contracting requirements.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose a new policy requirement on small entities. The FAR currently promotes the use of and documentation of performance-based service contracting and the use of firm-fixed-price type of contracts and task orders when it is appropriate to do so. Therefore, a Final Regulatory Flexibility Analysis (FRFA) was not performed. The Councils invite comments from small businesses and other interested parties. The Councils will also consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–07, FAR Case 2000–307), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 7, and 37

Government procurement.

Dated: April 23, 2002

Al Matera,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final with One Change

Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR parts 2 and 37 that was published in the **Federal Register** at 66 FR 22082, May 2, 2001, as a final rule with the following change:

PART 7—ACQUISITION PLANNING

1. The authority citation for 48 CFR part 7 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 7.105 by adding a sentence to the end of paragraph (b)(4) to read as follows:

7.105 Contents of written acquisition plans.

* * * * *

(b) * * *

(4) * * * Provide rationale if a performance-based contract will not be used or if a performance-based contract for services is contemplated on other than a firm-fixed price basis (see 37.102(a) and 16.505(a)(3)).

* * * * *

[FR Doc. 02–10369 Filed 4–29–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 13, 25, and 52

[FAC 2001–07; FAR Case 1999–616; Item II]

RIN 9000–AI90

Federal Acquisition Regulation; Revisions to Balance of Payments Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to remove the language pertaining to the Balance of Payments Program.

DATES: Effective Date: May 15, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–07, FAR case 1999–616.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR part 25, Foreign Acquisition, to remove subpart 25.3, Balance of Payments Program, and makes conforming changes to FAR parts 13 and 52. This revision will reduce the administrative burdens on both the Government and the public, without significant impact on our international balance of payments.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 54936, September 11, 2000. One public comment was received. The commenter raised three specific issues: (1) This rule is a significant rule under E.O. 12866 and represents a major rule; (2) concern that no effort was made to coordinate the proposed changes and elimination of the Balance of Payments Program with the Department of Commerce; and (3) industry would be adversely impacted by the elimination of the Balance of Payments Program by the deletion of FAR 25.3. In response to these concerns, this rule is not deemed a significant rule nor a major rule and not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule applies primarily to civilian agency acquisitions of supplies valued at more than $100,000, but not more than $186,000, for use outside the United States. Few acquisitions meet all of these limitations. In reference to the coordination issue with the Department of Commerce, the Department of Commerce has a representative on the Civilian Agency Acquisition Council and raised no objection when the proposed rule was discussed and agreed upon. In addressing the commenter's economic concerns, it appears the commenter is unaware that the Balance of Payments Program will be continued within the Department of Defense, and is unaware of the DFARS case that has been opened to address this program.

Civilian agencies have limited overseas purchases and given the small range of products and services to which the Balance of Payments Program applies, the benefits derived from applying the Balance of Payments Program to Civilian agency procurements does not equal the time and effort expended. The Councils, with the recommendations of the International Acquisition Committee, thoroughly considered this comment before agreeing to convert the proposed rule to a final rule without change.

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies primarily to civilian agency acquisitions of supplies valued at more than $100,000, but not more than $186,000, for use outside the United States. Few acquisitions meet all of these limitations.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR will reduce information collection requirements to the paperwork burden previously approved under OMB Control Numbers 9000–0023, 9000–0130, and 9000-0141 by approximately 1,121 hours.

List of Subjects in 48 CFR Parts 13, 25, and 52

Government procurement.

Dated: April 23, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 13, 25, and 52 as set forth below:

1. The authority citation for 48 CFR parts 13, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

2. Amend section 13.302–5 by revising paragraph (d)(3)(i) to read as follows:

13.302–5 Clauses.

* * * * *

(d) * * *

(3)(i) When an acquisition for supplies for use within the United States cannot be set aside for small business concerns and trade agreements apply (see Subpart 25.4), substitute the clause at FAR 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, used with Alternate I or Alternate II, if appropriate, instead of the clause at FAR 52.225–1, Buy American Act—Supplies.

* * * * *

PART 25—FOREIGN ACQUISITION

25.000 [Amended]

3. Amend section 25.000 by removing ''the Balance of Payments Program,''.

25.001 [Amended]

4. Amend section 25.001 by removing paragraph (b) and redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d), respectively; and by removing ''and the Balance of Payments Program'' from the first sentence of newly redesignated paragraph (b).

25.002 [Amended]

5. Amend the table in section 25.002 as follows:

a. In the first column by removing ''25.3 Balance of Payments Program'' and adding, in its place, ''25.3 [Reserved]''; and

b. In the third and fifth columns by removing ''X'' and adding, in their place, ''—''.

6. Amend section 25.003 by revising the definition ''Eligible product'' to read as follows:

25.003 Definitions.

* * * * *

Eligible product means a foreign end product that is not subject to discriminatory treatment under the Buy American Act due to applicability of a trade agreement to a particular acquisition.

* * * * *

Subpart 25.3—[Reserved]

7. Remove and reserve subpart 25.3.

25.402 [Amended]

8. Amend section 25.402 in the first and fourth sentences by removing ''or the Balance of Payments Program''; and in the fourth sentence by removing the word ''such'' and inserting ''those'' in its place.

25.403 [Amended]

9. Amend section 25.403 in paragraph (a)(1) by removing ''and the Balance of Payments Program''.

25.405 [Amended]

10. Amend section 25.405 in the second sentence of paragraph (a) by removing ''or the Balance of Payments Program''.

25.406 [Amended]

11. Amend section 25.406 by removing ''or the Balance of Payments Program''.

25.501 [Amended]

12. Amend section 25.501 in paragraph (d) by removing ''and Balance of Payments Program''.

25.502 [Amended]

13. Amend section 25.502—

a. In the introductory text of paragraph (c) by removing ''or the Balance of Payments Program'';

b. In paragraph (c)(3) by removing ''and the Balance of Payments Program provide'' and adding ''provides'' in its place;

c. In the introductory text of paragraph (c)(4) by removing ''or 25.304'';

d. In paragraph (d)(2) by removing ''or Balance of Payments Program''; and

e. In paragraph (d)(3) by removing ''and Balance of Payments Program''.

14. Revise section 25.504 to read as follows:

25.504 Evaluation Examples.

The following examples illustrate the application of the evaluation procedures in 25.502 and 25.503. The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement (see 25.502(a)(1)). The evaluation factor may change as provided in agency regulations.

15. Amend section 25.504–1 by revising the section heading and paragraphs (b)(1) and (b)(2) to read as follows:

25.504–1 Buy American Act.

* * * * *

(b)(1) *Example 2.*

Offer A	$11,000	Domestic end product, small business
Offer B	$10,700	Domestic end product, small business
Offer C	$10,200	U.S.-made end product (not domestic), small business

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American Act applies. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business but is not a domestic end product (see 25.502(c)(4)). After applying the 12 percent factor, the evaluated price of Offer C is $11,424. Award on Offer B at $10,700 (see 25.502(c)(4)(ii)).

16. Amend section 25.1101 by revising paragraphs (a), (b), and (c)(1) to read as follows:

25.1101 Acquisition of supplies.

* * * * *

(a)(1) Insert the clause at 52.225–1, Buy American Act—

Supplies, in solicitations and contracts with a value exceeding $2,500 but not exceeding $25,000; and in solicitations and contracts with a value exceeding $25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

(i) The solicitation is restricted to domestic end products in accordance with Subpart 6.3;

(ii) The acquisition is for supplies for use within the United States and an exception to the Buy American Act applies (*e.g.,* nonavailability or public interest); or

(iii) The acquisition is for supplies for use outside the United States.

(2) Insert the provision at 52.225–2, Buy American Act Certificate, in solicitations containing the clause at 52.225–1.

(b)(1)(i) Insert the clause at 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act, in solicitations and contracts if—

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the value of the acquisition is more than $25,000, but is less than $177,000; and

(B) No exception in 25.401 applies. For acquisitions of agencies not subject to the Israeli Trade Act (see 25.406), see agency regulations.

(ii) If the acquisition value exceeds $25,000 but is less than $50,000, use the clause with its Alternate I.

(iii) If the acquisition value is $50,000 or more but is less than $54,372, use the clause with its Alternate II.

(2)(i) Insert the provision at 52.225–4, Buy American Act—North American Free Trade Agreement—Israeli Trade Act Certificate, in solicitations containing the clause at 52.225–3.

(ii) If the acquisition value exceeds $25,000 but is less than $50,000, use the provision with its Alternate I.

(iii) If the acquisition value is $50,000 or more but is less than $54,372, use the provision with its Alternate II.

(c)(1) Insert the clause at 52.225–5, Trade Agreements, in solicitations and contracts valued at $177,000 or more, if the Trade Agreements Act applies (see 25.401 and 25.403) and the agency has determined that the restrictions of the

Buy American Act are not applicable to U.S.-made end products. If the agency has not made such a determination, the contracting officer must follow agency procedures.

* * * * *

17. Amend section 25.1102 by revising the introductory text of paragraph (a), paragraph (b), the introductory text of paragraph (c), and paragraphs (d)(1) and (d)(2) to read as follows:

25.1102 Acquisition of construction.

(a) Insert the clause at 52.225–9, Buy American Act—Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than $6,806,000.

* * * * *

(b)(1) Insert the provision at 52.225–10, Notice of Buy American Act Requirement—Construction Materials, in solicitations containing the clause at 52.225–9.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

(c) Insert the clause at 52.225–11, Buy American Act— Construction Materials under Trade Agreements, in solicitations and contracts for construction that is performed in the United States valued at $6,806,000 or more.

* * * * *

(d)(1) Insert the provision at 52.225–12, Notice of Buy American Act Requirement—Construction Materials under Trade Agreements, in solicitations containing the clause at 52.225–11.

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American Act before receipt of offers, use the provision with its Alternate I.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Amend section 52.212–3 by—

a. Revising the date of the provision;

b. Removing ''—Balance of Payments Program'' from the introductory text of paragraph (f) (twice), and from paragraph (f)(1);

c. Removing ''—Balance of Payments Program'' from the introductory text of paragraph (g)(1) (twice), paragraphs (g)(1)(i), (g)(1)(ii), and (g)(1)(iii);

d. Revising paragraphs (g)(2) and (g)(3); and

e. Removing ''or the Balance of Payments Program'' from the second sentence of paragraph (g)(4)(iii). The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

Offeror Representations and Certifications—Commercial Items (May 2002)

* * * * *

(g) * * *

(2) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act Certificate, Alternate I (May 2002).* If Alternate I to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act'':

Canadian End Products:

Line Item No.

_____

_____

_____

(List as necessary)

(3) *Buy American Act—North American Free Trade Agreements—Israeli Trade Act Certificate, Alternate II (May 2002).* If Alternate II to the clause at FAR 52.225–3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled ''Buy American Act—North American Free Trade Agreement—Israeli Trade Act'':

Canadian or Israeli End Products:

Line Item No.

_____

_____

_____

Country of Origin

_____

_____

_____

(List as necessary)

* * * * *

19. Amend section 52.212–5 by revising the date of the clause and paragraphs (b)(18) and (b)(19)(i) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (May 2002)

(b) * * *

__(18) 52.225–1, Buy American Act—Supplies (41 U.S.C. 10a–10d).

__(19)(i) 52.225–3, Buy American Act—North American Free Trade Agreement—Israeli Trade Act (41 U.S.C. 10a–10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note).

* * * * *

52.213–4 [Amended]

20. Amend section 52.213–4 in the clause heading by removing ''(APR 2002)'' and adding ''(May 2002)'' in its place; and in paragraph (b)(1)(viii) by removing ''—Balance of Payments Program'', and by removing ''(Feb 2000)'' and adding ''(May 2002)'' in its place.

21. Amend section 52.225–1 by revising the section and clause headings; by revising paragraph (b); and by removing ''—Balance of Payments Program'' from paragraph (d). The revised text reads as follows:

52.225–1 Buy American Act—Supplies.

Buy American Act—Supplies (May 2002)

* * * * *

(b) The Buy American Act (41 U.S.C. 10a–10d) provides a preference for domestic end products for supplies acquired for use in the United States.

* * * * *

22. Amend section 52.225–2 by revising the section and provision headings; and in paragraph (a) by removing ''— Balance of Payments Program''. The revised text reads as follows:

52.225–2 Buy American Act Certificate.

* * * * *

Buy American Act Certificate (May 2002)

* * * * *

23. Amend section 52.225–3 by—

a. Revising the section and clause headings;

b. Revising paragraph (c);

c. Removing ''—Balance of Payments Program'' from the third sentence of paragraph (d); and

d. Removing from Alternates I and II ''*(Feb 2000)*'' and adding ''(May 2002)'' in their place; and removing ''—Balance of Payment Program'' from paragraph (d). The revised text reads as follows:

52.225–3 Buy American Act—North American Free Trade Agreement—Israeli Trade Act.

* * * * *

Buy American Act—North American Free Trade Agreement—Israeli Trade Act (May 2002)

* * * * *

(c) *Implementation.* This clause implements the Buy American Act (41 U.S.C. 10a–10d), the North American Free Trade Agreement Implementation Act (NAFTA) (19 U.S.C. 3301 note), and the Israeli Free Trade Area Implementation Act of 1985 (Israeli Trade Act) (19 U.S.C. 2112 note) by providing a preference for domestic end products, except for certain foreign end products that are NAFTA country end products or Israeli end products.

* * * * *

52.225–4 [Amended]

24. Amend section 52.225–4 by removing ''—Balance of Payments Program'' from the section and provision headings, paragraphs (a), (b), and (c), and Alternates I and II; and by revising the dates of the provision heading and Alternates I and II to read ''(MAY 2002)''.

25. Amend section 52.225–6 by revising the date of the provision and paragraph (c) to read as follows:

52.225–6 Trade Agreements Certificate.

* * * * *

Trade Agreements Certificate (May 2002)

* * * * *

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or NAFTA country end products unless the Contracting Officer determines that there are no offers for those products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

(End of provision)

26. Amend section 52.225–9 by—

a. Revising the section and clause headings;

b. Removing ''and the Balance of Payments Program'' from paragraph (b)(1);

c. Revising paragraph (b)(3)(i); and

d. Removing the words ''or Balance of Payments Program'' from paragraph (b)(3)(ii), the introductory text of paragraph (c), the first sentence of paragraph (c)(2), and in paragraph (c)(3) (twice). The revised text reads as follows:

52.225–9 Buy American Act—Construction Materials.

* * * * *

Buy American Act—Construction Materials (May 2002)

* * * * *

(b) * * *

(3) * * *

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

* * * * *

(End of clause)

27. Amend section 52.225–10 by—

a. Revising the section and provision headings;

b. Removing ''Balance of Payments Program—'' from paragraph (a);

c. In the first and third sentences of paragraph (b) of the provision by removing ''or Balance of Payments Program'';

d. In paragraph (c)(1) of the provision by removing ''or Balance of Payments Program''; and

e. In Alternate I by removing ''(*Feb 2000*)'' and adding ''(May 2002)'' in its place; and by removing from paragraph (b) of the Alternate ''or Balance of Payments Program''. The revised text reads as follows:

52.225–10 Notice of Buy American Act Requirement— Construction Materials.

* * * * *

Notice of Buy American Act Requirement—Construction Materials (May 2002)

* * * * *

(End of provision)

28. Amend section 52.225–11 by—

a. Revising the section and clause headings;

b. Removing the words ''and the Balance of Payments Program'' from paragraph (b)(1);

c. Revising paragraph (b)(4)(i) of the clause;

d. Removing the words ''or Balance of Payments Program'' from paragraph (b)(4)(ii), the introductory text of paragraph (c), the first sentence of paragraph (c)(2), and paragraph (c)(3) (twice); and

e. Revising the date and paragraph (b)(1) of Alternate I. The revised text reads as follows:

52.225–11 Buy American Act—Construction Materials under Trade Agreements.

* * * * *

Buy American Act—Construction Materials Under Trade Agreements (May 2002)

* * * * *

(b) * * *

(4) * * *

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

* * * * *

(End of clause)

Alternate I (May 2002)

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a–10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act applies to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country construction materials.

* * * * *

29. Amend section 52.225–12 by—

a. Revising the section and provision headings;

b. Removing ''Balance of Payments Program—'' from paragraph (a) of the provision;

c. Removing ''or Balance of Payments Program'' from the first and third sentences of paragraph (b) of the provision;

d. Removing ''or Balance of Payments Program'' from paragraph (c)(1) of the provision;

e. Removing ''(*Feb 2000*)'' from Alternate I and adding ''(May 2002)'' in its place, and by removing ''or Balance of Payments Program'' from paragraph (b) of the Alternate; and

f. Removing ''(*June 2000*)'' from Alternate II and adding ''(May 2002)'' in its place, and by removing ''Balance of Payments Program—'' from paragraph (a) of the Alternate. The revised text reads as follows:

52.225–12 Notice of Buy American Act Requirement— Construction Materials under Trade Agreements.

* * * * *

Notice of Buy American Act Requirement—Construction Materials Under Trade Agreements (May 2002)

* * * * *

[FR Doc. 02–10370 Filed 4–29–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 2001–07; FAR Case 2001–002; Item III]

RIN 9000–AJ37

Federal Acquisition Regulation; European Union Trade Sanctions

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to correct the clause prescription for the clauses that implement European Union trade sanctions by specifically exempting solicitations issued and contracts awarded by the Department of Defense.

DATES: Effective Date: May 15, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia L. Davis, Procurement Analyst, at (202) 219–0202. Please cite FAC 2001–07, FAR case 2001–002.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises FAR 25.1103(c)(2)(i) to specifically exclude solicitations issued and contracts awarded by DoD from the clause prescription for the use of FAR clauses 52.225–15, Sanctioned European Union Country End Products, and 52.225–16, Sanctioned European Union Country Services. FAR 25.600 clearly states that European Union trade sanctions do not apply to the Department of Defense.

This is not a significant regulatory action, and therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR part 25 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAC 2001–07, FAR case 2001–002), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 25

Government procurement.

Dated: April 23, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 25 as set forth below:

PART 25—FOREIGN ACQUISITION

1. The authority citation for 48 CFR part 25 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 25.1103 by revising paragraph (c)(2)(i) to read as follows:

25.1103 Other provisions and clauses.

* * * * *

(c) * * *

(2) * * *

(i) Solicitations issued and contracts awarded by—

(A) A contracting activity located outside of the United States, provided the supplies will be used or the services will be performed outside of the United States; or

(B) The Department of Defense;

* * * * *

[FR Doc. 02–10371 Filed 4–29–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 12 and 52

[FAC 2001–07; Item IV]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

DATES: *Effective Date:* May 15, 2002.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAC 2001–07, Technical Amendments.

List of Subjects in 48 CFR Parts 12 and 52

Government procurement.

Dated: April 23, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 12 and 52 as set forth below:

1. The authority citation for 48 CFR parts 12 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 12—ACQUISITION OF COMMERCIAL ITEMS

12.301 [Amended]

2. Amend section 12.301 at the end of paragraphs (b)(1) and (b)(2) by removing the semi-colons and adding a period in their places; and at the end of paragraph (b)(3) by removing ''; and'' and adding a period in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.214–20 by revising the introductory text of Alternates I and II to read as follows:

52.214–20 Bid Samples.

* * * * *

Alternate I (May 2002). As prescribed in 14.201–6(o)(2)(i), insert the following Alternate I:

* * * * *

Alternate II (May 2002). As prescribed in 14.201–6(o)(2)(ii), insert the following Alternate II:

* * * * *

52.244–6 [Amended]

4. Amend section 52.244–6 by revising the date of the clause to read ''(May 2002)''; removing from paragraph (c)(1)(ii) ''(Feb 1999)'' and adding ''(Apr 2002)'' in its place; and removing from paragraph (c)(1)(v) ''Flagged'' and adding ''Flag'' in its place.

[FR Doc. 02–10372 Filed 4–29–02; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2001–07 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 2001–07 which precedes this document. These documents are also available via the Internet at *http://www.arnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 2001–07

Item	Subject	FAR case	Analyst
I	Preference for Performance-Based Contracting	2000–307	Wise.
II	Revisions to Balance Of Payments Program	1999–616	Davis.
III	European Union Trade Sanctions	2001–002	Davis.
IV	Technical Amendments.		

Item I—Preference for Performance-Based Contracting (FAR Case 2000–307)

This final rule converts the interim rule published as Item I of FAC 97–25 at 66 FR 22082, May 2, 2001, to a final rule with an amendment at FAR 7.105. The rule implements Section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). The rule affects contracting officers that buy services by explicitly establishing a preference for performance-based contracts or task orders. Guidance for performance-based contracting is available at the following websites:

http://www.arnet.gov/Library/OFPP/BestPractices/,

http://oamweb.osec.doc.gov/pbsc/index.html, or

http://www.gsa.gov/Portal/content/pubs_content.jsp?contentOID=119969&contentType=1008&PMVP=1.

Item II—Revisions to Balance of Payments Program (FAR Case 1999–616)

This final rule amends the FAR by removing Subpart 25.3, Balance of Payments Program, and making conforming changes to FAR Parts 13, 25, and 52. This revision will reduce administrative burdens on both the Government and the public. The FAR no longer requires contracting officers to use balance of payments procedures to evaluate foreign offers when acquiring supplies for use outside the United States that are valued at more than $100,000, but not more than $186,000, or when awarding a construction contract to be performed outside the United States and valued at less than $6,909,500. However, the Balance of Payments Program will be continued in the Department of Defense, and a Defense Federal Acquisition Regulation Supplement rule is being processed for this purpose.

Item III—European Union Trade Sanctions (FAR Case 2001–002)

This final rule revises FAR 25.1103(c)(2)(i) to specifically exclude solicitations issued and contracts awarded by DoD from the clause prescription for the use of FAR clauses 52.225–15, Sanctioned European Union Country End Products, and 52.225–16, Sanctioned European Union Country Services. This rule is a clarification of existing policy. DoD contracting officers must ensure that the clauses implementing European Union trade sanctions are not included in DoD solicitations and contracts.

Item IV—Technical Amendments

These amendments update sections and make editorial changes at FAR 12.301, 52.214–20, and 52.244–2.

Dated: April 23, 2002.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. 02–10373 Filed 4–29–02; 8:45 am]

BILLING CODE 6820–EP–P

Federal Register

Tuesday,
April 30, 2002

Part VII

Department of Education

Elementary School Foreign Language Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

DEPARTMENT OF EDUCATION

[CFDA No.: 84.294A]

Elementary School Foreign Language Incentive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions you need to apply for an award under this program.

Purpose of Program: This program provides incentive payments for each public elementary school that offers its students a program designed to lead to communicative competency in a foreign language.

Eligible Applicants: Public elementary schools. The Secretary strongly recommends that local educational agencies (LEAs) apply on behalf of schools within their respective jurisdictions.

Deadline for Transmittal of Applications: June 3, 2002.

Deadline for Intergovernmental Review: August 1, 2002.

Estimated Available Funds: $6,000,000.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

Description of Program

To be eligible for an incentive payment under this program, a public elementary school must meet the requirements of section 5494, subpart 9 of part D of title V of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110). The Act considers a program to be designed to lead to communicative competency in a foreign language if the program is comparable to one that provides not less than 45 minutes of instruction in a foreign language for not fewer than four days per week throughout the academic year.

The amount of our incentive payment to a public elementary school is based on the number of students participating in the school's program designed to lead to communicative competency in a foreign language.

The program must have a primary focus on foreign language instruction. The Secretary does not award incentive payments for programs that teach Native American languages.

An application must include the following:

(1) Information that establishes the eligibility of the foreign language program at each of the elementary schools included in the application. Specifically, you must describe and document the 2001–2002 program methodology and time schedule.

(2) The number of students participating in the program at each of the elementary schools included in the application. To provide for the fair distribution of funds available under this program, and for uniform counts across schools, the Secretary requests that a public elementary school indicate the number of students that were participating, as of the 2001–2002 academic year, in its program that leads to communicative competency in a foreign language.

If you receive a grant, we request that each school provide a report on the impact of the incentive funding on the foreign language instruction program at the end of the school year for which you received funding.

Intergovernmental Review of Federal Programs

This program is subject to Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any SPOC, see the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html.*

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in the actual application notice to the following address: The Secretary, E.O. 12372—CFDA# 84.294A, U.S. Department of Education, room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which an applicant submits its completed application. Do not send applications to the above address.

Application Instructions and Forms

The Appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, and various assurances and certifications. Please organize the parts and additional materials in the following order:

- Application for Federal Assistance (ED 424)(Exp. 11/30/2004) and instructions and definitions.
- Protection of Human Subjects in Research (Attachment to ED 424).
- Application Narrative.
- School and Student Data Report Form.
- Assurances—Non-Construction Programs (Standard Form 424B) (Rev. 7–97).
- Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013, 12/98) and instructions.
- Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (**Note:** ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)
- Disclosure of Lobbying Activities (Standard Form LLL (Rev. 7–97)) if applicable and instructions.
- Notice to All Applicants concerning the Department of Education's General Education Provisions Act (GEPA) including examples of required response.
- Program Non-Regulatory Guidance.

You may submit information on a photocopy of the application forms, the

assurances, and the certifications. However, you must submit one original signed application, including ink signatures on all forms and assurances and two copies of the application. Please mark each application as original or copy. We will not award a grant unless we have received a completed application form.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to either of the program contact persons listed under **FOR FURTHER INFORMATION CONTACT**.

However, the Department is not able to reproduce in an alternative format the standard forms included in this application notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

FOR FURTHER INFORMATION CONTACT: You may contact either of the following: Rebecca Richey, U.S. Department of Education, 400 Maryland Avenue, SW, room 5617, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9717 or via Internet: *rebecca.richey@ed.gov.*

Ana Garcia, U.S. Department of Education, 400 Maryland Avenue, SW, room 5632, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–8077 or via Internet: *ana.garcia@ed.gov.*

Itzeht Testa-Salcedo, U.S. Department of Education, 400 Maryland Avenue, SW, room 5629, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–8726 or via Internet: *itzetht.testa-salcedo@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) If You Send Your Application by Mail

You must mail the original and two copies on or before the deadline date. Mail your application to:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA# (84.294A), 7th and D Streets, SW, Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: Due to recent disruption to normal mail delivery, the Department encourages you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal Express or United Parcel Service; U. S. Postal Service Express Mail; or a courier service) to transmit your application for this competition. If you use an alternative delivery method, please obtain the appropriate proof of mailing under this section (a) ''If You Send Your Application by Mail,'' then follow the instructions in section (b) ''If You Deliver Your Application by Hand.''

(b) If You Deliver Your Application by Hand

You or your courier must hand deliver the original and two copies by 4:30 p.m. (Washington, DC time) on or before the deadline date. Deliver your application to:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA #294A), 7th and D Streets, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or if you or your courier delivers it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U. S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424 (exp. 11/30/2004)) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

Program Authority: 20 U.S.C. 7259c.

Dated: April 25, 2002.

Maria Hernandez Ferrier,

Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

Appendix

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1885–0531. *Expiration date:* 9/30/2002. We estimate the time required to complete this information collection to average 40 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the collection of information. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of English Language Acquisition, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5607, Switzer Building, Washington, DC 20202–6510.

Instructions for Application Narrative

Before preparing the Application Narrative you should read carefully the description of the program.

The narrative should provide sufficient information for the Secretary to determine that the foreign language program at each of

the public elementary schools included in the application meets the requirements in section 5494 of the Elementary and Secondary Education Act (*see* the ''**Description of Program**'' in this notice).

The Secretary strongly suggests that the applicant submit charts or other visuals to provide information on the foreign language program at each of the public elementary schools included in the application.

Note: The section on **Page Limit** elsewhere in this application notice applies to your application.

Suggested Page Limit

You should limit the narrative to the equivalent of no more than 5 pages, using the following standards:

(1) A ''page'' is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

(2) You should double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

(3) Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to the application for Federal Education Assistance Form (ED 424); the other application forms and attachments to those forms; the assurances and certification.

Checklist for Applicants

Use the following checklist to verify that all necessary items are addressed in your application:

Application for Federal Assistance (ED 424)
Application narrative—suggested not to exceed 5 double-spaced pages (see description of program, application narrative instructions and non-regulatory guidance)
School and Student Data Report
Assurances—Non-Construction Programs (SF 424B)
Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug Free Workplace Requirements (ED 80–0013)
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) Not transmitted to Department.
Disclosure of Lobbying Activities (SF–LLL)
General Education Provisions Act (GEPA) response
Copy of letter to Single State Point of Contact (SPOC) if applicable

Elementary School Foreign Language Incentive Program, Non-Regulatory Guidance (Questions and Answers)

Q. What is the definition of an ''elementary school''?

A. The term elementary school means a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law. The definition of this term is in section 9101 of the Elementary and Secondary Education Act, as amended by the No Child Left Behind Act of 2001.

Q. Are public and private elementary schools eligible for the Foreign Language Incentive Program?

A. Eligible entities are public elementary schools. Private schools cannot apply. It is strongly recommended that local education agencies (school districts) apply on behalf of elementary schools within their jurisdiction. Each elementary school included in the application must have a program leading to communicative competency in a foreign language.

Q. What is a program of foreign language instruction designed to lead to ''communicative competency''?

A. A foreign language program leading to communicative competency is comparable to a program providing at least 45 minutes of instruction not fewer than 4 days per week (180 minutes) throughout an academic year.

Example #1: Public Elementary School #1 has a fourth grade Japanese Foreign Language program with the same 20 students attending on Monday, Tuesday, Wednesday and Thursday for 50 minutes each day. These 20 students may be counted in the School and Student Data Report.

Example #2: Public Elementary School #2 has a first and second grade Spanish/English Dual Immersion program with Spanish instruction in the morning and English in the afternoon 5 days per week. These 40 students may be counted in the School and Student Data Report.

Example #3: Public Elementary School #3 has a Transitional Bilingual Education program in the first through fifth grades. Since the primary purpose of the program is to transition students to English, the transitional program is not considered a foreign language program. These students would not be counted in the School and Student Data Report.

Q. What is considered an academic year?

A. An academic year is the period of time denoting the beginning and ending dates for school academic purposes.

Q. What is not a foreign language?

A. The Secretary does not award incentive payments for programs that teach Native American languages, Native Hawaiian, other Pacific Island languages or Native Alaskan languages. In addition, the program is not intended to support the teaching of English.

Q. May an applicant include an elementary school with a grant under the Foreign Language Assistance Program (FLAP) in the student data report for the Foreign Language Incentive Program (FLIP)?

A. An elementary school, with a foreign language program comparable to teaching at least 45 minutes a day for not fewer than 4 days per week, may have a FLAP grant and also include these students in the data report for the FLIP.

Q. May a public elementary school with an afternoon or Saturday foreign language program be included in the student data report?

A. The purpose of the Foreign Language Incentive Program is to award incentive payments to public elementary schools that provide students attending the school with a foreign language program designed to lead to communicative competency. Therefore, to be eligible for consideration, an afternoon and Saturday program must be: (1) Provided by the public elementary school, (2) attended by students from the school, (3) comparable to a program that provides at least 45 minutes of instruction per day for not fewer than 4 days per week, and (4) conducted throughout an academic year.

Q. How does the applicant determine that the public elementary school is providing the eligible program?

A. The following are recommended guidelines:

Is the public school legally responsible for the program?

Is the school paying the teacher's salary?

Q. May a foreign language program planned for the 2002–2003 academic year be included in the student data report?

A. Data in the student data report must only include students in eligible programs during the 2001–2002 academic year.

Q. How is the incentive payment distributed?

A. The incentive payment is distributed one time.

Q. What is the amount of the incentive payment for each eligible elementary school?

A. The incentive amount is computed according to a formula based on the number of students in a school's eligible program compared to the total number of students nationwide in eligible programs that apply.

Q. What information may be helpful to an applicant in preparing the narrative section of the Foreign Language Incentive Program application?

A. An applicant must provide information that establishes the eligibility of the foreign language program at each of the elementary schools included in the application, and must specifically describe and document the 2001–2002 program methodology and time schedule. Applicants may wish to consider the following questions as a guide to preparing the 5-page application narrative:

- Which foreign language is taught in the program?
- Is the program of communicative competency well described including (1) the methodology and (2) the specific minutes of instruction per day, the days per week, and information regarding the length of the program during the academic year?
- Is it clear that the program was in effect during the 2001–2002 school year?
- How did the school identify the program participants?
- Is the information conveyed clearly in a chart or graph?

Q. Must an applicant include in the narrative section of the application how the school will use the foreign language incentive payment if the Department awards a payment?

A. The narrative section does not need to provide information regarding the use of the incentive payment. However, it is anticipated that the foreign language incentive payment will support foreign language programs.

Q. How does an applicant comply with Executive Order 12372, the Intergovernmental Review of Federal Programs, item #10 of the Application for Federal Education Assistance (ED 424)?

A. Applicants must first review the State Single Point of Contact (SPOC) list available at *http://www.whitehouse.gov/omb/grants/spoc.html*. If a State contact is included in the list, the applicant must contact the SPOC to inquire about the State's process under Executive Order 12372. If the State requests the application for review, a copy of the cover letter sent to the State contact must be submitted with the application package and Item #10 checked Yes with the date included. If the program is not covered by the Executive order, or the State has not selected the program for review, Item #10 must be checked No and the reason checked.

Q. Who should sign as the Authorized Representative on the Application for Federal Assistance and other forms?

A. It is recommended that the Superintendent of Schools sign as the Authorized Representative.

Q. How does an applicant access the statutory provision authorizing FLIP (section 5494 of the Elementary and Secondary Education Act)?

A. Applicants may access section 5494 via Internet: *http://www.ed.gov/offices/OELA/flipstatute.html*

BILLING CODE 4000–01–P

U.S. DEPARTMENT OF EDUCATION

OFFICE OF ENGLISH LANGUAGE ACQUISTION, LANGUAGE ENHANCEMENT, AND ACADEMIC ACHIEVEMENT FOR LIMITED ENGLISH PROFICIENT STUDENTS

ELEMENTARY FOREIGN LANGUAGE INCENTIVE PROGRAM

SCHOOL AND STUDENT DATA REPORT

INSTRUCTIONS: This form is to be used by local education agencies to identify each public elementary school that provides a program that is designed to lead to communicative competency in a foreign language and to report the number of students participating in each program. A program shall be considered to be designed to lead to communicative competency if the program is comparable to a program that provides not less than 45 minutes of instruction in a foreign language not less than four days per week throughout the academic year (section 5494). Student data reported should be based on the number of students participating as of the 2001-2002 academic year.

LOCAL EDUCATION AGENCY (LEA)_____

NAME OF SCHOOL	GRADES	LANGUAGES	NUMBER OF STUDENTS
TOTAL NUMBER OF STUDENTS			
TYPE OR PRINT NAME AND TITLE OF AUTHORIZED LEA REPRESENTATIVE			
SIGNATURE OF LEA REPRESENTATIVE		DATE	

OMB No. 1885-0531 Exp. 9/30/2002

Application for Federal Education Assistance (ED 424)

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

Organizational Unit

1. Name and Address
Legal Name: _____

Address: _____

_____

_____ City _____ State _____ County _____ ZIP Code + 4

2. Applicant's D-U-N-S Number |___|___|___|___|___|___|___|___|___|

3. Applicant's T-I-N |___|___| - |___|___|___|___|___|___|___|

4. Catalog of Federal Domestic Assistance #: **84 294A**

Title: ELEMENTARY SCHOOL FOREIGN LANGUAGE INCENTIVE PROGRAM

5. Project Director: _____

Address: _____

_____ City _____ State _____ Zip code + 4

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

6. Novice Applicant ___Yes ___No

7. Is the applicant delinquent on any Federal debt? ___Yes ___No
(If "Yes," attach an explanation.)

8. Type of Applicant *(Enter appropriate letter in the box.)* |___|

A - State	F - Independent School District
B - Local	G - Public College or University
C - Special District	H - Private, Non-profit College or University
D - Indian Tribe	I - Non-profit Organization
E - Individual	J - Private, Profit-Making Organization

K - Other (*Specify*): _____

Application Information

9. Type of Submission:

-PreApplication	*-Application*
___ Construction	___ Construction
___ Non-Construction	___ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
___ Yes *(Date made available to the Executive Order 12372 process for review):* ____/____/_____

___ No *(If "No," check appropriate box below.)*
___ Program is not covered by E.O. 12372.
___ Program has not been selected by State for review.

11. Proposed Project Dates: ____/____/_____ ____/____/_____
Start Date: **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period?
___ Yes (Go to 12a.) ___ No (Go to item 13.)

12a. Are **all** the research activities proposed designated to be exempt from the regulations?
___ Yes (Provide Exemption(s) #): _____

___ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:

_____

_____

Estimated Funding

14a. Federal	$ _____.00
b. Applicant	$ _____.00
c. State	$ _____.00
d. Local	$ _____.00
e. Other	$ _____.00
f. Program Income	$ _____.00
g. TOTAL	$ _____.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (*Please type or print name clearly.*)

_____

b. Title: _____

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address: _____

e. **Signature of Authorized Representative**

_____ Date: ___/___/_____

Instructions for Form ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com.**

3. **Taxpayer Identification Number.** Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Novice Applicant.** Check **"Yes"** or **"No"** only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, **leave blank**.

   Check **"Yes"** if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check **"No"** if you do not meet the requirements for novice applicants.

7. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

8. **Type of Applicant.** Enter the appropriate letter in the box provided.

9. **Type of Submission.** See "Definitions for Form ED 424" attached.

10. **Executive Order 12372.** See "Definitions for Form ED 424" attached. Check **"Yes"** if the application is subject to review by E.O.12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. **Human Subjects Research.** (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check **"No"** if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check **"Yes"** if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check **"Yes"** even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. **If Human Subjects Research is Exempt from the Human Subjects Regulations.** Check **"Yes"** if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. **If Human Subjects Research is Not Exempt from Human Subjects Regulations.** Check **"No"** if some or all of the planned research activities are covered (not exempt), and provide the assurance number if available. In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. **Human Subjects Assurance Number.** If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None" in item 12b. In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the **only** involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s)***

do not participate in the activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for Item 12 a. and designated exemption number(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12 a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) **Human Subjects Involvement and Characteristics**: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) **Sources of Materials**: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) **Recruitment and Informed Consent**: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) **Potential Risks**: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) **Protection Against Risk**: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) **Importance of the Knowledge to be Gained**: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) **Collaborating Site(s)**: If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C., 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. § § 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. § § 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. § § 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) § § 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. § § 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. § § 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. § § 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. § § 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. § § 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. § § 1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § § 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. § § 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § § 4801 et seq.) which prohibits the use of lead- based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an

employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ____ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* **$**	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a) (last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3). Washington, DC 20202-4248.

[FR Doc. 02–10654 Filed 4–29–02; 8:45 am]

BILLING CODE 4000–01–C

Reader Aids

Federal Register

Vol. 67, No. 83

Tuesday, April 30, 2002

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–3447**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
TTY for the deaf-and-hard-of-hearing	**523–5229**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.access.gpo.gov/nara**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.nara.gov/fedreg**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://hydra.gsa.gov/archives/publaws-l.html** and select *Join or leave the list* (or change settings); then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **info@fedreg.nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, APRIL

15333–15462 1
15463–15706 2
15707–16010 3
16011–16284 4
16285–16626 5
16627–16968 8
16969–17278 9
17279–17602 10
17603–17904 11
17905–18084 12
18085–18460 15
18461–18772 16
18773–19100 17
19101–19318 18
19319–19506 19
19507–19634 22
19635–20004 23
20005–20424 24
20425–20606 25
20607–20880 26
20881–21158 29
21159–21558 30

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12473 (See EO 13262) 18773
13262 18773

Proclamations:
7536 17599
7537 17601
7538 17905
7539 18083
7540 19097
7541 19099
7542 19633
7543 19635
7544 20005
7545 20007
7546 20605

Administrative Orders:
Presidential Determinations:
No. 2002–12 of April 1, 2002 18461
No. 2002–13 of April 12, 2002 20425
No. 2002–14 of April 16, 2002 20427
No. 2002–15 of April 18, 2002 20429
No. 2002–16 of April 18, 2002 20431

5 CFR

410 15463
532 20009
550 .....15463, 19319
551 15463
630 15463
1600 17603
1650 17603

7 CFR

6 20881
300 18463
301 .....18463, 18464, 21159
318 18463
319 18463
353 18463
400 16285
401 16285
403 16285
405 16285
406 16285
409 16285
414 16285
415 16285
416 16285
422 16285
425 16285
430 16285
433 16285
435 16285
437 16285
441 16285
443 16285
445 16285
446 16285
447 16285
450 16285
451 16285
454 16285
455 16285
456 16285
458 16285
916 16286
917 16286
925 20607
930 .....20613, 22161
932 20616
985 20618
989 15707
1030 19507
1205 21167
1210 17907
1280 17848
1703 16011
1714 16969
1951 19101
3565 16969

Proposed Rules:
12 19699
28 19357
301 21183
354 19524
500 17301
905 15339
920 .....15339, 18517
927 15747
1205 15495
1219 17018
1710 17018

8 CFR

214 18062
236 19508
241 19508
248 18062
286 15333

Proposed Rules:
214 18065
235 18065
248 18065
286 15753

9 CFR

53 17605
72 .....17605, 18466
93 20624
94 .....15334, 20883
113 15711
390 20009

Proposed Rules:
78 20460
97 19524
130 19524
113 16327

Ch. III 15501

10 CFR

2 20884
20 ....16298, 20250
32 20250
35 20250
Proposed Rules:
16 20059
50 16654
71 21390
170 17490
171 17490
430 17304
710 16061
824 15339

11 CFR

Proposed Rules:
111 20461

12 CFR

3 16971
208 16971
225 16971
226 16980
264a 15335
304 18793
325 16971
567 16971
609 16627
611 17907
614 17907
620 16627
701 20013
951 18796
985 18806
1750 19321
Proposed Rules:
8 20466
560 20468
563b 17230
574 17230
575 17230
590 20468
591 20468

13 CFR

121 19637
Proposed Rules:
121 ....16063, 17020, 19317

14 CFR

23 ....18807, 20885
25 ....20414, 20624, 20887
39 ....15468, 15470, 15472, 15473, 15475, 15476, 15714, 15717, 16011, 16983, 16987, 16991, 16994, 17279, 17917, 17923, 17929, 17931, 17934, 18810, 18813, 18815, 19101, 19104, 19322, 19327, 19511, 19637, 19640, 19641, 19644, 19646, 19650, 19652, 19655, 19657, 19659, 19661, 19663, 19809, 19810, 20626, 20628, 20890
71 ....15478, 15479, 18059, 18467, 18817, 19107, 19108, 19330, 19514, 19666, 21170
97 ....16013, 16014, 19667, 19669
330 18468
Ch. VI 17258
1300 17258
1310 17258
Proposed Rules:
Ch. I 19534
25 ....16329, 16656
39 ....15755, 15758, 15760, 15762, 15763, 16064, 16067, 16069, 16330, 16331, 16333, 16335, 17305, 17306, 18141, 19132, 19134, 21185
71 ....15502, 15503, 15504, 18517, 19135, 19710, 19711, 20919, 20920, 20921
382 17308

15 CFR

Ch. VII 20630

16 CFR

305 17936
312 18818
Proposed Rules:
310 15767
1500 20062

17 CFR

230 ....19671, 19848
239 19848
240 19671
270 19848
274 19848
Proposed Rules:
3 19358
37 20702
38 20702
39 20702
40 20702
229 19896
230 ....19886, 19914
239 19914
240 19896
249 ....19896, 19914
274 19886
275 19500
279 19500

18 CFR

Proposed Rules:
Ch. 1 ....16071, 20922
284 19136

19 CFR

181 ....15480, 19810
191 16634
Proposed Rules:
141 16664
142 16664
201 20709

20 CFR

404 ....20018, 20890
416 20890
Proposed Rules:
404 19138

21 CFR

173 15719
201 16304
330 16304
331 16304
341 16304
346 16304
355 16304
358 16304
369 16304
510 17282
520 17284
522 ....17282, 18085, 18086
558 21171
701 16304
874 20893
888 21171
Proposed Rules:
184 18834
201 20070
212 15344
312 20070
314 20070
601 20070
872 16338
1308 20072

22 CFR

41 18821
62 17611
121 20894
Proposed Rules:
213 17655

24 CFR

50 19492
1005 19492
3280 20400
3284 18398

25 CFR

Proposed Rules:
502 20923
542 19713

26 CFR

1 ....18988, 20028, 20433, 20632, 20896, 20901
54 18988
301 ....20028, 20901
602 ....18988, 20028, 20901
Proposed Rules:
1 ....17309, 18834, 18835, 19713, 20072, 20711, 20923, 21187
54 19713
301 ....18839, 20072, 20923
602 19713

27 CFR

20 ....17937, 20868
40 19332
252 18086
Proposed Rules:
4 17312

28 CFR

89 17027

29 CFR

1926 18091
1979 15454
2520 17264
2700 18485
4022 ....16950, 18112
4022B 16950
4044 ....16950, 18112
Proposed Rules:
552 ....16668, 17760
1926 18145

30 CFR

75 18822
201 19109
206 19109
212 19109
216 19109
217 19109
218 19109
219 19109
220 19109
227 19109
228 19109
230 19109
241 19109
243 19109
917 21173
Proposed Rules:
58 19140
72 19140
936 16341
938 ....18518, 21187

31 CFR

103 ....21110, 21114, 21117, 21121
210 17896
Ch. V 16308
Proposed Rules:
356 20934

32 CFR

199 ....15721, 18114, 18825
326 17616
505 17618
706 ....18485, 18487, 18488, 18489, 18490, 18491
806b 17619
935 16997
Proposed Rules:
21 21486
22 21486
32 21486
34 21486
37 21486
199 ....17948, 19141

33 CFR

100 ....17621, 17622
110 20907
117 ....18492, 19113, 20032, 20033, 20441, 20442
140 18493
165 ....15484, 15744, 16016, 17284, 17667, 18523, 19333, 19673, 19674, 19676, 20443, 20642, 20907, 20909, 20913
334 20445
Proposed Rules:
100 17665
117 ....16016, 18521
147 15505
165 ....15507, 16668, 17314, 19142, 19144, 19365, 19367, 19728, 20474, 20937
167 18527
203 20477

34 CFR

Proposed Rules:
34 18072

36 CFR

703 16018
1254 17286
Proposed Rules:
1190 15509
1191 15509
1253 18146

37 CFR

252 21176

257 21176
Proposed Rules:
201 18148

38 CFR

Ch. 1 16023
20 16309
46 19678
Proposed Rules:
60 21191

39 CFR

111 ....18684, 20644
224 16023
229 16023
230 16024
233 16023
266 16023
273 16023
Proposed Rules:
111 ....18842, 20074
501 20077

40 CFR

52 ....15335, 15336, 16026, 16638, 16640, 16642, 16644, 17007, 17286, 17624, 17939, 18115, 18493, 18497, 19335, 19337, 19515, 19682, 19685, 20034, 20036, 20645, 20647
55 20651
60 20652
61 20652
62 17944
63 ....15486, 16317, 16582, 16614, 17762, 17824
81 ....16646, 17939, 19337
82 21130
97 21522
148 16262
180 ....15727, 16027, 17631, 19114, 19120, 19339
261 16262
268 ....16262, 17119
271 ....16262, 17636, 19517, 20038, 20446
300 19130
302 16262
721 17643
745 15489
Proposed Rules:
9 17122
51 ....17954, 18528
52 ....15345, 16669, 17317, 17669, 17954, 17955, 18149, 18528, 18547, 19148, 19369, 19730, 20078, 20080, 20478, 20713
55 17955
62 ....17321, 17961
63 ....15510, 15674, 16154, 16343, 16625, 17492, 20206
70 15767
81 ....17955, 21194
82 21135
96 17954
97 17954
122 17122
123 17122
124 17122
125 17122
141 19030
180 ....16073, 18150
228 15348
261 18528
262 18528
264 18528
265 18528
270 18528
271 20080
432 20081
721 16345
1603 16670

41 CFR

101-25 17649
301-10 17946
301-53 17946

42 CFR

68c 17650
405 20681
410 20681
411 20681
414 20681
415 20681

43 CFR

423 19092
3130 17866
3160 17866
3430 17962
3470 17962
3800 17962

44 CFR

64 16030
65 21178
67 20446
Proposed Rules:
67 20481

45 CFR

1000 19518
Proposed Rules:
701 17528
702 17528
703 17528
704 17528
705 17528
706 17528
707 17528
708 17528
1626 18845
1639 19342
2551 ....18846, 20485
2552 18847

46 CFR

45 19685
71 21062
114 21062
115 21062
125 21062
126 21062
167 21062
169 21062
175 21062
176 21062
Proposed Rules:
151 19730
356 18547
540 ....19535, 19730

47 CFR

0 18827
1 ....16647, 17009, 18827
2 ....17009, 17288, 20914
11 18502
25 17288
26 ....17009, 20914
32 20052
36 17013
51 20052
52 16322
54 ....15490, 17014, 19809, 20052
61 17009
63 18827
69 ....15490, 17009
73 ....15493, 15735, 15736, 16651, 16652, 17014, 17654, 18832, 19693, 20459, 21182
74 16652
76 17015
87 17288
90 16652
Proposed Rules:
0 18560
1 ....17036, 17325, 18560
2 ....16683, 17038
25 16347
52 16347
61 17036
69 17036
73 ....15768, 15769, 16350, 16351, 16673, 16706, 17041, 17669, 17670, 17963, 19151, 19152, 19732, 20485, 20940, 20941, 20942
74 16683
76 18848
80 16683
90 ....16351, 16683
97 16683

48 CFR

Ch 1 ....21532, 21539
2 21533
7 21533
12 21538
13 21534
25 ....21534, 21538
37 21533
52 ....21534, 21538
208 20687
210 20687
215 20688
225 ....20692, 20693, 20697
235 20699
252 ....20693, 20697
1823 17016
1836 17016
1852 17016
Proposed Rules:
16 19952
22 19952
27 17278
31 19952
37 19952
52 ....17278, 19952
203 18160
208 15351
216 15351
225 ....18161, 20713
245 20714
252 20714

49 CFR

171 15736
172 15736
173 15736
174 15736
176 15736
178 15736
180 15736
216 19970
229 16032
232 17556
238 19970
533 16052
571 ....19343, 19518
573 19693
659 15725
Proposed Rules:
171 ....15510, 21328
172 ....15510, 21328
173 ....15510, 21328
174 21328
175 ....15510, 21328
176 21328
177 21328
178 21328
191 16355
192 16355
195 16355
512 21198
533 19536
567 ....15769, 20943
571 ....15769, 20943
574 ....15769, 20943
575 ....15769, 20943

50 CFR

17 ....15337, 18356, 19812
222 20054
223 ....18833, 20054
229 ....15493, 20699
230 20055
600 15338
648 ....20056, 21140
660 ....15338, 16322, 16323, 18117, 18512, 20056
679 ....16325, 18129, 20057, 20915
Proposed Rules:
17 ....15856, 16492, 18572
92 16707
216 19370
600 ....15516, 19152, 19154, 20715, 20943
622 16359
635 ....17349, 20716, 20944
648 ....16079, 16362, 21206
654 19155
660 ....17353, 17354, 18576, 20944
679 15517

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 30, 2002

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Interstate ozone transport reduction—
Federal Nitrogen Oxides Budget Trading Program; Section 126 petitions; revised deadlines; published 4-30-02
Air quality implementation plans; approval and promulgation; various States:
California; published 3-1-02

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Sponsor name, and address changes—
Alpharma, Inc.; published 4-30-02

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Classification services to growers; 2002 user fees; comments due by 5-6-02; published 4-19-02 [FR 02-09784]

AGRICULTURE DEPARTMENT
Agricultural Research Service
National Arboretum; schedule of fees; comments due by 5-10-02; published 4-10-02 [FR 02-08589]

AGRICULTURE DEPARTMENT
Rural Utilities Service
Electric loans:
Useful life of facility determination; comments due by 5-9-02; published 4-9-02 [FR 02-08484]

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
Government in the Sunshine Act; implementation; comments due by 5-8-02; published 4-8-02 [FR 02-08437]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic highly migratory species—
Pelagic longline management; comments due by 5-10-02; published 4-10-02 [FR 02-08689]
Caribbean, Gulf of Mexico, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 5-9-02; published 3-25-02 [FR 02-07128]
Northeastern United States fisheries—
Atlantic hagfish; comments due by 5-6-02; published 4-5-02 [FR 02-08335]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
West Coast salmon; comments due by 5-9-02; published 4-24-02 [FR 02-10083]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Marine mammals:
Incidental taking—
Gulf of Mexico; oil and gas structure removal activities; bottlenose and spotted dolphins; comments due by 5-6-02; published 4-19-02 [FR 02-09519]

CONSUMER PRODUCT SAFETY COMMISSION
Poison prevention packaging:
Child-resistant packaging requirements—
Hormone replacement therapy products containing progestogen and estrogen substances; exemption; comments due by 5-6-02; published 2-19-02 [FR 02-03999]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA
Freedom of Information Act, Privacy Act, et al.; implementation; comments due by 5-7-02; published 3-15-02 [FR 02-06091]

DEFENSE DEPARTMENT
Army Department
Corps Regulatory Program and new Historic Preservation Advisory Council regulations; comments due by 5-7-02; published 3-8-02 [FR 02-05653]

DEFENSE DEPARTMENT
Acquisition regulations:
Multiple award contracts; competition requirements for purchase of services; comments due by 5-6-02; published 4-1-02 [FR 02-07785]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Federal and federally-funded construction projects; government contractors' labor relations; open competition and government neutrality preservation; comments due by 5-6-02; published 3-7-02 [FR 02-05385]

ENERGY DEPARTMENT
Personnel Security Assistance Program; security police officer positions; eligibIlitiy requirements; comments due by 5-6-02; published 4-4-02 [FR 02-08134]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Pesticide active ingredient production; comments due by 5-10-02; published 4-10-02 [FR 02-07223]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Portland cement manufacturing industry; comments due by 5-6-02; published 4-5-02 [FR 02-08161]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Portland cement manufacturing industry; comments due by 5-6-02; published 4-5-02 [FR 02-08162]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Vegetable oil production; solvent extraction; comments due by 5-6-02; published 4-5-02 [FR 02-05862]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Vegetable oil production; solvent extraction; comments due by 5-6-02; published 4-5-02 [FR 02-05863]
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Puerto Rico; comments due by 5-10-02; published 4-10-02 [FR 02-08686]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Alabama; comments due by 5-10-02; published 4-10-02 [FR 02-08531]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Alabama; comments due by 5-10-02; published 4-10-02 [FR 02-08532]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08293]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08294]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08291]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08292]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08287]

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 5-8-02; published 4-8-02 [FR 02-08288]
South Carolina; comments due by 5-10-02; published 4-10-02 [FR 02-08685]
Water supply:
National primary and secondary drinking water regulations
Aeromonas hydrophilia in drinking water distribution systems; analytical method approval; comments due by 5-6-02; published 3-7-02 [FR 02-05447]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Numbering resource optimization; comments due by 5-6-02; published 4-5-02 [FR 02-08250]
Digital television stations; table of assignments:
Virginia; comments due by 5-9-02; published 4-9-02 [FR 02-08497]
Radio broadcasting:
World Radiocommunication Conferences; frequency bands below 28000 kHz; comments due by 5-8-02; published 4-8-02 [FR 02-07727]
Radio services, special:
Private land mobile radio services—
Public safety communications improvement in 800 MHz band, and 900 MHz industrial/land transportation and business port channels consolidation; comments due by 5-6-02; published 4-5-02 [FR 02-08304]
Radio stations; table of assignments:
Louisiana; comments due by 5-6-02; published 4-5-02 [FR 02-08196]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal and federally-funded construction projects; government contractors' labor relations; open competition and government neutrality preservation; comments due by 5-6-02; published 3-7-02 [FR 02-05385]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Medicare & Medicaid Services
Medicare:
Medicare-Endorsed Prescription Drug Card Assistance Initiative
Correction; comments due by 5-6-02; published 3-15-02 [FR C2-05129]
Medicare-endorsed prescription drug card assistance initiative
Cross-reference; comments due by 5-6-02; published 3-6-02 [FR 02-05129]
Medicare-endorsed prescription drug discount card assistance initiative for State sponsors
Cross-reference; comments due by 5-6-02; published 3-6-02 [FR 02-05130]
State Children's Health Insurance Program:
Allotments and grants to States—
Prenatal care for unborn children; eligibility; comments due by 5-6-02; published 3-5-02 [FR 02-05217]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
General hospital and personal use devices—
Medical washer and medical washer-disinfector; classification; comments due by 5-8-02; published 2-7-02 [FR 02-03019]
Orthopedic devices—
Resorbable calcium salt bone void filler device; classification; comments due by 5-8-02; published 2-7-02 [FR 02-03017]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal claims collection:
Administrative wage garnishment; comments due by 5-7-02; published 3-8-02 [FR 02-05524]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Migratory bird hunting:
Alaska; spring/summer migratory bird subsistence harvest; comments due by 5-8-02; published 4-8-02 [FR 02-08384]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Federal and federally-funded construction projects; government contractors' labor relations; open competition and government neutrality preservation; comments due by 5-6-02; published 3-7-02 [FR 02-05385]

INTERIOR DEPARTMENT
National Indian Gaming Commission
Electronic or electromechanical facsimile; games similar to bingo; and electronic, computer, or other technologic aids to Class II games; definitions;
Comment extension;; comments due by 5-6-02; published 4-29-02 [FR 02-10396]

POSTAL SERVICE
Domestic Mail Manual:
Automated flats; new specifications; comments due by 5-6-02; published 4-17-02 [FR 02-09306]

STATE DEPARTMENT
Visas; nonimmigrant documentation:
Automatic visa revalidation; comments due by 5-6-02; published 3-7-02 [FR 02-05325]

TRANSPORTATION DEPARTMENT
Coast Guard
Commercial vessels; liferaft servicing intervals; comments due by 5-6-02; published 3-5-02 [FR 02-05211]
Ports and waterways safety:
Fore River Channel, Weymouth, MA; safety zone; comments due by 5-10-02; published 4-10-02 [FR 02-08591]
Naval Vessel Protection Zones; comments due by 5-6-02; published 3-20-02 [FR 02-06766]

TRANSPORTATION DEPARTMENT
International charter flights; approval standards; rulemaking petition; comments due by 5-6-02; published 3-21-02 [FR 02-06820]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Light-sport aircraft; comments due by 5-6-02; published 2-5-02 [FR 02-02302]
Airworthiness directives:
de Havilland Inc.; comments due by 5-10-02; published 3-28-02 [FR 02-07417]
Air Tractor, Inc.; comments due by 5-10-02; published 3-11-02 [FR 02-05690]
Bombardier; comments due by 5-6-02; published 4-4-02 [FR 02-08174]
Dornier; comments due by 5-6-02; published 4-5-02 [FR 02-08285]
Fokker; comments due by 5-6-02; published 4-5-02 [FR 02-08284]
McDonnell Douglas; comments due by 5-6-02; published 3-21-02 [FR 02-06795]
Textron Lycoming; comments due by 5-10-02; published 3-11-02 [FR 02-05691]
Airworthiness standards:
Special conditions—
Airbus Industrie Model A340-500 and -600 series airplanes; comments due by 5-8-02; published 4-8-02 [FR 02-07963]
Class D airspace; comments due by 5-6-02; published 4-2-02 [FR 02-07853]
Class E airspace; comments due by 5-6-02; published 4-2-02 [FR 02-07854]

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Fuel economy standards:
Light trucks; 2005-2010 model years; comments due by 5-8-02; published 2-7-02 [FR 02-02874]
Light trucks; 2005-2010 model years; correction; comments due by 5-8-02; published 4-22-02 [FR 02-09736]
Motor vehicle safety standards:

Tires; performance requirements; comments due by 5-6-02; published 3-5-02 [FR 02-05151]
Correction; comments due by 5-6-02; published 4-3-02 [FR 02-08078]

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcohol, tobacco, and other excise taxes:
Firearms disabilities for nonimmigrant aliens and import permit requirements for nonimmigrant aliens bringing firearms and ammunition into U.S.; comments due by 5-6-02; published 2-5-02 [FR 02-02715]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Unit-livestock-price method; public hearing; comments due by 5-6-02; published 2-4-02 [FR 02-02625]

TREASURY DEPARTMENT
Thrift Supervision Office
Mutual savings associations, mutual holding company reorganizations, and conversions from mutual to stock form; comments due by 5-9-02; published 4-9-02 [FR 02-07979]

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
De novo review; time limit for requests; comments due by 5-10-02; published 3-11-02 [FR 02-05785]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1432/P.L. 107–160
To designate the facility of the United States Postal Service located at 3698 Inner Perimeter Road in Valdosta, Georgia, as the ''Major Lyn McIntosh Post Office Building''. (Apr. 18, 2002; 116 Stat. 123)

H.R. 1748/P.L. 107–161
To designate the facility of the United States Postal Service located at 805 Glen Burnie Road in Richmond, Virginia, as the ''Tom Bliley Post Office Building''. (Apr. 18, 2002; 116 Stat. 124)

H.R. 1749/P.L. 107–162
To designate the facility of the United States Postal Service located at 685 Turnberry Road in Newport News, Virginia, as the ''Herbert H. Bateman Post Office Building''. (Apr. 18, 2002; 116 Stat. 125)

H.R. 2577/P.L. 107–163
To designate the facility of the United States Postal Service located at 310 South State Street in St. Ignace, Michigan, as the ''Bob Davis Post Office Building''. (Apr. 18, 2002; 116 Stat. 126)

H.R. 2876/P.L. 107–164
To designate the facility of the United States Postal Service located in Harlem, Montana, as the ''Francis Bardanouve United States Post Office Building''. (Apr. 18, 2002; 116 Stat. 127)

H.R. 2910/P.L. 107–165
To designate the facility of the United States Postal Service located at 3131 South Crater Road in Petersburg, Virginia, as the ''Norman Sisisky Post Office Building''. (Apr. 18, 2002; 116 Stat. 128)

H.R. 3072/P.L. 107–166
To designate the facility of the United States Postal Service located at 125 Main Street in Forest City, North Carolina, as the ''Vernon Tarlton Post Office Building''. (Apr. 18, 2002; 116 Stat. 129)

H.R. 3379/P.L. 107–167
To designate the facility of the United States Postal Service located at 375 Carlls Path in Deer Park, New York, as the ''Raymond M. Downey Post Office Building''. (Apr. 18, 2002; 116 Stat. 130)

Last List April 8, 2002

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://hydra.gsa.gov/archives/publaws-l.html* or send E-mail to **listserv@listserv.gsa.gov** with the following text message:

SUBSCRIBE PUBLAWS-L
Your Name.

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.