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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–082–1]

Mexican Fruit Fly Regulations; Addition of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by designating a portion of San Diego County, CA, as a regulated area. This action is necessary on an emergency basis to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. This action restricts the interstate movement of regulated articles from the regulated area in California.

DATES: Interim rule effective August 10, 1998. Consideration will be given only to comments received on or before October 13, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–082–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–082–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247; or e-mail: michael.b.stefan@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly, *Anastrepha ludens* (Loew), is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations (contained in 7 CFR 301.64 through 301.64–10 and referred to below as the regulations) were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas. Prior to the effective date of this rule, the only area in California regulated for the Mexican fruit fly was a portion of Los Angeles County.

Section 301.64–3 provides that the Deputy Administrator of the Animal and Plant Health Inspection Service (APHIS) for Plant Protection and Quarantine (PPQ) shall list as a regulated area each quarantined State, or each portion of a quarantined State, in which the Mexican fruit fly has been found by an inspector, in which the Deputy Administrator has reason to believe the Mexican fruit fly is present, or that the Deputy Administrator considers necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs.

Less than an entire quarantined State is designated as a regulated area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of PPQ reveal that portions of San Diego County, CA, are infested with the Mexican fruit fly. Specifically, on July 20, 1998, inspectors found four Mexican fruit flies in a residential area in San Diego County, CA. Since the initial detection, a total of 11 Mexican fruit flies have been captured in the same area. The Mexican fruit fly is not known to occur anywhere else in the continental United States except in a portion of Los Angeles County, CA, and in Texas.

Accordingly, to prevent the spread of the Mexican fruit fly to noninfested areas of the United States, we are amending the regulations in § 301.64–3(c) by designating as a regulated area a portion of San Diego County, CA. The regulated area is described in the rule portion of this document.

There does not appear to be any reason to designate any other portions of the quarantined State of California as a regulated area. Officials of State agencies of California are conducting an intensive Mexican fruit fly eradication program in the regulated areas in California. Also, California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of certain articles from the regulated areas that are substantially the same as those imposed with respect to the interstate movement of regulated articles.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mexican fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It 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. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This rule restricts the interstate movement of regulated articles from a portion of San Diego County, CA. Within the regulated area there are approximately 183 small entities that may be affected by this rule. These include 67 fruit sellers, 1 swapmeet, 71 nurseries, 43 growers, and 1 farmer's market. These 183 entities comprise less than 1 percent of the total number of similar entities operating in the State of California. Additionally, these small entities sell regulated articles primarily for local intrastate, not interstate movement, so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments, that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

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 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 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.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the methods employed to eradicate the Mexican fruit fly will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

This rule contains no 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, Incorporation by reference, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

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

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.64–3, paragraph (c), the entry for California is amended by adding an entry for San Diego County, in alphabetical order, to read as follows:

§ 301.64–3 Regulated areas.

* * * * *

(c) * * *

California

* * * * *

San Diego County. That portion of San Diego County in the El Cajon area bounded by a line drawn as follows: Beginning at the intersection of State Highway 67 and Mapleview Street; then east along Mapleview Street to Lake Jennings Park Road; then southeast along Lake Jennings Park Road to El Monte Road; then east along an imaginary line to the intersection of Blossom Valley Road and Flinn Springs Road; then southeast along Flinn Springs Road to Olde Highway 80; then east along Olde Highway 80 to Dunbar Lane; then south along Dunbar Lane to Alpine Boulevard; then southeast along Alpine Boulevard to Arnold Way; then south along Arnold Way to Harblson Canyon Road; then southwest along Harblson Canyon Road to Dehesa Road; then southwest along Dehesa Road to Sloane Canyon Road; then west along an imaginary line to the intersection of Willow Glenn Drive and Hillsdale Road; then northwest and west along Hillsdale Road to State Highway 54; then north along State Highway 54 to Chase Avenue; then west along Chase Avenue to Rolling Hills Drive; then west along Rolling Hills Drive to Fuerte Drive; then southwest, west, and northwest along Fuerte Drive to Severin Drive; then north along Severin Drive to Interstate Highway 8; then northeast along Interstate Highway 8 to Russell Road; then west along Russell Road to Cuyamaca Street; then north along Cuyamaca Street to Mission Gorge Road; then east along Mission Gorge Road to Woodside Avenue; then northeast along Woodside Avenue to State Highway 67; then northeast along State Highway 67 to the point of beginning.

* * * * *

Done in Washington, DC, this 10th day of August 1998.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–21905 Filed 8–13–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1768–98; AG No. 2173–98]

RIN 1115–AE42

Adjustment of Certain Fees of the Immigration Examinations Fee Account

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adjusts the fees schedule of the Immigration Examinations Fee Account (IEFA) for certain immigration adjudication and naturalization applications and petitions. Fees collected from persons filing these applications and petitions are deposited into the IEFA and used to fund the cost of processing immigration adjudication and naturalization

applications and petitions and associated support services; the cost of providing similar services to asylum and refugee applicants; and the cost of similar services provided to other immigrants at no charge. This rule ensures that the fees that fund the IEFA generate sufficient revenue to recover the full cost of processing immigration adjudication and naturalization applications and petitions, and the cost of asylum, refugee, and other immigrant services provided at no charge to the applicant.

DATES: This final rule is effective October 13, 1998, except the Form N–400 (fee increase) contained in the table in Section 103.7(b)(1), which will take effect on January 15, 1999.

FOR FURTHER INFORMATION CONTACT: Michael T. Natchuras, Chief, Fee Policy and Rate Setting Branch, Office of Budget, Immigration and Naturalization Service, on (202) 616–2754, or Charles J. Yaple, Senior Staff Accountant, Fee Policy and Rate Setting Branch, Office of Budget, Immigration and Naturalization Service, on (202) 305–0020, or in writing at 425 I Street, NW., Room 6240, Washington, DC 20536.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Immigration and Naturalization Service (Service) published a proposed rule in the **Federal Register** on January 12, 1998, at 63 FR 1775, to adjust the current Immigration Examinations Fee schedule. The fee adjustment is needed to comply with specific Federal immigration laws and the Federal user fee statute and corresponding regulations, which require Federal agencies to charge a fee for services when such services provide benefits to recipients that do not accrue to the public at large. The revised fees are calculated to recover the costs of providing these special services and benefits. The proposed rule was published with a 60-day comment period, which closed on March 13, 1998. The Service received 2,033 comments pertaining to the increases to the fees of the IEFA.

Comments were received from a broad spectrum of individuals and organizations, including 26 refugee and immigrant service organizations, 20 community literacy collaboratives, 45 public policy and advocacy groups, 49 religious affiliated agencies, 10 attorney organizations, 717 past and present adopting parents, and 1,127 concerned or prospective citizens. All of the comments were carefully considered before preparing this final rule. The following is a discussion of these comments and the Service's response.

II. Summary of Comments

A. Form I–600/600A, Petition to Classify an Orphan as an Immediate Relative and Form N–643, Application for Certification of Citizenship-Adopted Child

Seven hundred and seventeen comments were received from prior or prospective adopting parents expressing dissatisfaction with the fee increases associated with Forms I–600 and I–600A, Petition to Classify an Orphan as an Immediate Relative, and the Application for Advance Processing of Orphan Petition, respectively, and Form N–643, Application for Certificate of Citizenship-Adopted Child. All 717 comments received were similar in nature. The commenters felt that these fees discriminated against American citizens who wished to adopt abandoned children living in orphanages around the world.

The Commissioner has always placed a very high priority on expediting international adoption applications. Each office must have at least one designated adjudicator to process international adoption applications. At most offices, the adjudicator receives the application directly. The international adoption process is labor intensive and generates a considerable amount of direct case interaction and correspondence.

The Fee Study Team documented the process and performed cycle time analysis for Forms I–600 and N–643, to accurately identify the costs associated with the processing of these specific petitions. The observations show that the processing of these petitions was particularly labor intensive and required the constant attention of adjudicators and others assigned to these cases.

Eighty percent of the applicants have numerous questions and contact the adjudicator with inquiries and requests for information before the initial submission of their application. Ninety percent of the applications are delivered in person, which leads to an extensive question and answer period between the applicant and the adjudicator. For instance, the average time needed for receipt of the other applications and petitions is slightly less than 5 minutes each. However, for the Form I–600/I–600A, the receipt cycle time is greater than 49 minutes because of the questions and concerns of the applicant.

Since the Service does not receive any appropriated funding (tax dollars) to cover the cost of processing applications and petitions for any naturalization or immigration benefit, the increase in fees is necessary to recover the full costs associated with processing international adoption applications.

B. Form N–400, Application for Naturalization

Twelve hundred and ninety-eight comments were received opposing the increase in the fee for the Form N–400, Application for Naturalization. Most of the comments began by stating that the proposed fee increase from $95 to $225 would create a hardship for most immigrant families because their family income is relatively low. One hundred and twenty-one of the commenters also specifically referenced the Commissioner's remarks that no fee increases would be implemented until the Service made progress in improving naturalization processing.

The Service has made significant progress and remains committed to fulfilling the Commissioner's pledge regarding the naturalization program. Currently, efforts are underway to address naturalization processing, with teams assisting field offices in achieving increased levels of productivity. In addition, the Service has already opened 128 co-located and storefront Application Support Centers (ASC), and established 35 mobile ASC routes and 41 designated state or local law enforcement agencies nationwide to facilitate the fingerprinting of applicants. Further, since April 15, 1998, the Service has fully implemented the Direct Mail program, with all Form N–400s being filed by mail at one of the Service's four highly automated service centers. Finally, the Service has installed the Computer Linked Application Information Management System 4.0 (CLAIMS) at all four Service Centers, with scheduled implementation at the larger district offices by the end of 1998.

Although the Service has made substantial progress in naturalization processing, the Commissioner has decided to change the effective date for the Form N–400, Application for Naturalization, fee increase to January 15, 1999, to permit the full implementation of the Service's plan to address naturalization processing.

C. Applicant Fees Should Not Pay for Unrelated Expenses or Atypical Costs

Fifty-one of the commenters opposed the use of the applicants fees to pay for expenses that they perceived to be for unrelated services such as the running of the asylum, refugee, and parole, and humanitarian affairs (formerly the Cuban-Haitian Entrant Program) programs. In the Departments of

Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991 (Pub. L. 101–515), Congress authorized the Service to provide certain immigration adjudication and naturalization services at no cost to the applicants. Public Law 101–515 states that "fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected [8 U.S.C. 1356(m)]." As a result of this legislation, Congress no longer provided the Service with an appropriation to cover the costs of asylum and refugee services, and directed the Service to fund these costs with revenue from the IEFA.

In FY 1996, Congress also authorized the Service to pay for the cost of the Cuban-Haitian Entrant Resettlement Program from the IEFA. In FY 1997, Congress transferred the cost of other asylum and refugee services that had been paid from the Violent Crime Trust Fund to the IEFA. Through explicit legislative language and subsequent appropriation action, Congress has signaled its desire that certain asylum and refugee services should be provided at no charge to the recipient. The revenue to pay for these costs must be recovered from the fees charged to other applicants for immigration adjudication and naturalization benefits. All expenses being included for cost recovery are consistent with Federal law and Federal accounting standards.

Many of these commenters also opposed the Service paying for costs that are unusual or atypical when compared to the usual costs in a normal processing year. They claimed that the type of organizational activities that the Service is currently engaged in, such as infrastructure building, should not be funded by current applications and must not be included in the fee calculation. Proper accounting treatment requires inclusion of unusual or atypical costs, such as improvement of automation activities or upgrading of records management. These types of costs were assigned a useful life and the cost of these projects amortized or depreciated over the assigned useful life. Therefore, a portion of the unusual or atypical cost has been included in the fee calculation framework for the current year and treated like any other cost based on the useful life assigned to that asset.

D. The Service Should Seek Additional Sources for Funding Certain Adjudications Functions From Congress

Fifty of the commenters encouraged the Service to seek additional sources of funding from Congress for certain adjudications functions. Since FY 1989, the fees collected and deposited into the Examinations Fee Account have been the sole source of funding for immigration adjudication and naturalization services. In creating the IEFA, the Congress intended that this account be self-sustaining, and not be funded by tax dollars. The Service has been managing this account consistent with Federal law and Congressional direction.

In addition, the commenters felt that the Service should seek action from Congress that would end the practice of taking 245(i) fee money out of the IEFA and redirecting it to detention-related activities. The commenters felt adjudication services were being provided with respect to 245(i) activities and, thus, fees submitted in connection with a 245(i) adjustment application should remain in the IEFA, which is the funding source for immigration adjudication and naturalization services. Detention-related activities, the commenters noted, should be funded with appropriated funds. The Service will take these comments under advisement. However, since the drafting of the proposed rule, it is noted that Congress has enacted legislation which has reinforced its intent that 245(i) fee money (Pub. L. 105–119) not be deposited in the IEFA.

Finally, these commenters addressed the requirement that Congressional notification is needed whenever a reprogramming of more than $500,000 or 10 percent of the change in the net total of any program activity's approved budget is to take place. The Service is only required to provide notice to Congress; however, the commenters felt the Service has adopted a policy in which it does not spend the funds until the change is approved by Congress. The Service, per Department of Justice policy, only takes action under the protocol that Congress has established, which requires Congressional approval before spending authorities can be changed.

E. The Level of Service Provided at Each Office Should Be Consistent Nationwide

Sixty-six of the commenters opposed increasing fees when service varies so greatly from office to office. The proposed fees were developed on a nationwide basis based on the identified resources needed to produce specific goods or services. The Service matched the resources needed to receive and to process the new applications/petitions with the workload expected to be received in FY 1998. The process was consistently applied for all applications and petitions. However, the Service is currently reviewing the workloads in the various district offices in an effort to balance waiting times.

F. The Service Should Consider Gradual or Phased-in Fee Increases

Eighteen commenters recommended that fees be gradually phased in over a 3-year period. The Service agrees that this may be a useful approach in the future, and will study this course of action. However, fees have not been increased since July 14, 1994, and, based upon projected fee revenues and corresponding cost estimates, the Service projects a shortfall in revenue. Currently, the Service cannot gradually increase fees over a 3-year period without jeopardizing the financial solvency of the entire account. This rule is necessary to ensure that the fees that fund the IEFA generate sufficient revenue to recover the full cost of processing immigration adjudication and naturalization applications and petitions, including the costs of similar services provided at no charge to asylum applicants or other immigrants.

G. Fee Calculation Methodology

Thirty-three of the commenters objected to the methodology used to calculate the proposed fees. More specifically, the cost modeling convention records events "as is," not "as should be." Some of the commenters felt that the Activity Based Costing methodology calculated fees based upon inefficient practices.

The Fee Account Study adhered to the guidance contained in the Office of Management and Budget (OMB) Circular A–25, User Charges, which requires that user charges imposed recover the full cost to the Government for providing a special benefit. In addition, the Federal Accounting Standards Advisory Board (FASAB) provides additional guidance on the meaning of full-cost recovery. In FASAB Statement No. 4, full cost is defined as:

> The total amount of resources used to produce the output. This includes direct and indirect costs that contribute to the output regardless of funding sources. It also includes costs of supporting services provided by other responsibility segments or entities.

The fees reflect the current cost of processing applications and petitions at the time of the fee study. The study was conducted consistent with the requirements of the Chief Financial

Officers Act of 1990, which requires a biennial review of user fees to ensure that full costs are being recovered.

H. Form I–539, Application To Extend Status-Change Nonimmigrant Status; Form I–129H, Petition To Classify Nonimmigrant as a Temporary Worker; Form I–140, Immigrant Petition for Foreign Worker; Form I–485, Application To Register Permanent Status or Adjust Status; Form I–765, Application for Employment Authorization; Form I–612, Application for Waiver of Foreign Residence Requirement

Comments were received from two universities opposing the fee increases for petitions frequently filed by international students, faculty, and staff. The first commenter opposed the fee increases for the Form I–539, Form I–129H, Form I–140, Form I–612, and the Form I–765 because they would impose an unacceptable financial burden upon the recipients. The second commenter objected to the fee increases until service improved and recommended waiving the fees, specifically the fee for the Form I–765, because of economic necessity. There are provisions in 8 CFR 103.7(c) that provide for waiver of fees if certain conditions are met. The Service often waives fees for this application when the economic need exists. The proposed rule stated, "For FY 1998, the Service estimates that approximately 50 percent of the Form I–765 applications will be processed at no charge to applicants, at a total cost of $35.9 million."

The fee increases on which these commenters were voicing opposition resulted from a comprehensive examination of costs associated with application and petition processing. As previously stated, the Service is required to review the fee structure, and to ensure that the full costs of providing special benefits to identifiable recipients be recovered by the Federal Government. Accordingly, these fees must be increased to recover costs.

I. Waiver/Exempt Costs

In the proposed rule, it was indicated that the Service is currently evaluating under what conditions a waiver of any fee should be granted. The proposed rule specifically sought comments on setting standards for application fee waivers. One hundred and nineteen commenters responded to this solicitation. These commenters agreed that a waiver policy and a standard waiver form were desirable. Twenty-nine commenters suggested that a "means test" be used to determine if an applicant qualifies for a fee waiver. The Service will take this information under advisement during its ongoing review of this matter.

Presently, the Service grants case-specific fee waivers and will continue to grant case-specific fee waivers in the future. The purpose of the revision of the existing fee waiver regulation is to remedy the inconsistent manner in which fee waiver requests are presently being adjudicated nationwide. To address this situation, the Service is presently developing interim fee waiver standards that will be distributed to the field in the form of field guidance. The following proposals for granting fee waivers are under review: establishment of a "fee cap" limiting total costs for families filing multiple applications, consideration of whether the applicant participates in certain means-tested public assistance programs, and consideration of special, humanitarian circumstances. Distribution of the guidance will coincide with the implementation of this rule. After distribution of the field guidance, a Financial Impact Assessment will be performed to develop a fee waiver policy that is equitable to the applicant and feasible within the financial realities of the reimbursements needed to fund the program. The Service plans to publish an interim rule on the new fee waiver policy on July 1, 1999, and a final rule on the subject on October 1, 1999.

J. Assignment of Waiver/Exempt Costs and Asylum and Refugee (International Affairs) Surcharge

In the proposed rule, the Service highlighted the methodology used to assign costs for waiver/exempt costs and an asylum and refugee surcharge. The Service specifically sought comments on whether a flat rate or a percentage should be used to assign costs related to the surcharge applications and petitions for which the fees are waived. No comments were received on this question. Accordingly, the Service will continue to assign its waiver/exempt costs and surcharge as a flat percentage of each application's or petition's processing costs.

III. Fee Adjustments

The fee adjustments, as adopted in this rule, are shown as follows:

BILLING CODE 4410–10–P

Immigration Examinations Fee Account/Fee Schedule		
Application Number	**Description**	**Fee**
I-17	Petition for Approval of School for Attendance by Nonimmigrant Student	$ 200.00
I-90	Application to Replace Permanent Resident Card	$ 110.00
I-102	Application for Replacement/Initial Nonimmigrant Arrival/Departure Record	$ 85.00
I-129/I-129H/ I-129L	Petitions for Nonimmigrant Worker	$ 110.00
I-129F	Petition for Alien Fiancé(e)	$ 95.00
I-130	Petition for Alien Relative	$ 110.00
I-131	Application for Travel Document	$ 95.00
I-140	Petition for Alien Worker	$ 115.00
I-485	Application to Register Permanent Residence or Adjust Status	$ 220.00
I-526	Immigrant Petition by Alien Entrepreneur	$ 350.00
I-539	Application to Extend/Change Nonimmigrant Status	$ 120.00
I-600/ I-600A	Petition to Classify Orphan as an Immediate Relative/Application for Advance Processing of Orphan Petition	$ 405.00
I-601	Application for Waiver of Ground of Inadmissability	$ 170.00
I-612	Application for Waiver of the Foreign-Residence Requirement	$ 170.00
I-751	Petition to Remove the Conditions of Residence	$ 125.00
I-765	Application for Employment Authorization	$ 100.00
I-817	Application for Voluntary Departure under the Family Unity Act	$ 120.00
I-824	Application for Action on an Approved Application or Petition	$ 120.00
I-191	Application for Advance Permission to Return to Unrelinquished Domicile	$ 170.00
I-192	Application for Advance Permission to Enter as a Nonimmigrant	$ 170.00
I-193	Application for Waiver of Passport and/or Visa	$ 170.00
I-212	Application to Reapply for Admission into the US After Deportation	$ 170.00
I-829	Petition by Entrepreneur to Remove Conditions	$ 345.00
N-400	Application for Naturalization	$ 225.00
N-565	Application for Replacement Naturalization/Citizenship Document	$ 135.00
N-600	Application for Certification of Citizenship	$ 160.00
N-643	Application for Certificate of Citizenship on Behalf of an Adopted Child	$ 125.00

BILLING CODE 4410–10–C

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. The Service does acknowledge that a number of small entities, particularly those filing business-related applications and petitions such as the Form I–129, Petition for Nonimmigrant Worker, may be affected by this rule. For FY 1998, the Service projects that approximately 254,000 Forms I–129 will be filed. However, this volume represents petitions filed by a variety of businesses, ranging from large multi-national corporations to small domestic businesses. The Service does not have statistics on the number of small businesses that may be affected by this rule. The Service tracks the number of petitions filed; these volume statistics do not indicate the types of businesses that file petitions, or the size of the businesses filing the Form I–129.

The Service conducted an exhaustive review of the costs incurred for processing the various immigration adjudication and naturalization applications and petitions. The Service believes that, as a result of this study, these fees reflect, as closely as possible, the full cost of providing the specific service provided through the filing of an application or petition. The Service conducted its review and adjusted its fees in accordance with statutory mandates and Federal cost accounting standards. These statutes and standards require the Service to recover the full cost of providing services that confer a benefit that does not accrue to the public at large. While some of the increases are notable, it is important to note that the immigration adjudication and naturalization fees have not been increased since July 1994; during the same period the Service had experienced a significant increase in its costs.

Unfunded Mandates Reform Act of 1995

This rule will not 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, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. This rule will only affect persons who file applications or petitions for immigration benefits. The increase in fees is necessary to defray the higher costs of adjudicating and granting the benefits sought. No further actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is a major rule as defined by the Small Business Regulatory Enforcement Act of 1996. Based on the data included in the proposed rule, this rule will result in an annual effect on the economy of $231 million, in order to generate the revenue necessary to fund the increased expenses of processing the Service's adjudication and naturalization applications and petitions. The increased fees will be paid by persons who file applications or petitions to obtain immigration benefits. Copies of the cost analysis are available upon written request to the individuals listed in the section of this document entitled **FOR FURTHER INFORMATION CONTACT.**

The $230,993,000 projected increase in revenues probably overstates the actual receipt of applications and petitions because it is likely that there will be fewer applications and petitions filed because of the implementation of the higher fees. The decrease in volume due to the higher fees has a real economic effect in that there will be fewer people applying for and receiving services paid for by the Service's user fees.

Executive Order 12866

This rule is considered by the Department of Justice to be an economically "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, because it will have an annual effect on the economy of $231 million. This increase in revenue will be used to fund the processing of immigration adjudication and naturalization applications and petitions. The revenue increase is based on the Service's costs and workload volumes that were available at the time of the fee study. The volume of applications and petitions filed is projected based on a regression analysis of a 5-year history of actual applications and petitions received by the Service. The regression analysis is adjusted for any anticipated or actual changes in laws, policies, or procedures that may affect future filing patterns. The proposed fees will be paid by an estimated 4.3 million individuals and businesses filing immigration adjudication and naturalization applications and petitions. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for review.

The $230,993,000 projected increase in revenues probably overstates the actual receipt of applications and petitions because it is likely that there will be fewer applications and petitions filed because of the implementation of the higher fees. The decrease in volume due to the higher fees has a real economic effect in that there will be fewer people applying for and receiving services paid for by the Service's user fees.

Executive Order 12612

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements. The information collection requirements contained in this rule were previously approved for use by OMB. The OMB control numbers for these collections are contained in 8 CFR 299.5, Display of control numbers.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of Information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552(a); 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by:

(a) Removing the entry for "Form I–485A" from the listing of fees; and by

(b) Revising the entries for the following forms listed, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–17. For filing an application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof—$200.00.

* * * * *

Form I–90. For filing an application for Permanent Resident Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated, or destroyed, or for a change in name—$110.00.

* * * * *

Form I–102. For filing a petition for an application (Form I–102) for Arrival-Departure Record (Form I–94) or Crewman's Landing (Form I–95) , in lieu of one lost, mutilated, or destroyed—$85.00.

Form I–129. For filing a petition for a nonimmigrant worker—$110.00.

Form I–129F. For filing a petition to classify nonimmigrant as fiancee or fiance under section 214(d) of the Act—$95.00.

Form I–129H. For filing a petition to classify nonimmigrant as temporary worker or trainee under section 214(c) of the Act—$110.00.

Form I–129L. Petition to employ intracompany transferee—$110.00.

Form I–130. For filing a petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—$110.00.

Form I–131. For filing an application for travel documents—$95.00.

Form I–140. For filing a petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act—$115.00.

* * * * *

Form I–191. For filing applications for discretionary relief under section 212(c) of the Act—$170.00.

Form I–192. For filing an application for discretionary relief under section 212(d)(3) of the Act, except in an emergency case, or where the approval of the application is in the interest of the United States Government—$170.00.

Form I–193. For filing an application for waiver of passport and/or visa—$170.00.

Form I–212. For filing an application for permission to reapply for an excluded, deported or removed alien, an alien who has fallen into distress, an alien who has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—$170.00.

* * * * *

Form I–485. For filing application for permanent resident status or creation of a record of lawful permanent residence—$220.00 for an applicant 14 years of age or older; $160.00 for an applicant under the age of 14 years; no fee for an applicant filing as a refugee under section 209(a) of the Act.

* * * * *

Form I–526. For filing a petition for an alien entrepreneur—$350.00.

* * * * *

Form I–539. For filing an application to extend or change nonimmigrant status—$120.00.

* * * * *

Form I–600. For filing a petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$405.00.

Form I–600A. For filing an application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$405.00.

Form I–601. For filing an application for waiver of ground of inadmissability under section 212 (h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections.)—$170.00.

Form I–612. For filing an application for waiver of the foreign-residence requirement under section 212(e) of the Act—$170.00.

* * * * *

Form I–751. For filing a petition to remove the conditions on residence, based on marriage—$125.00.

* * * * *

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$100.00.

* * * * *

Form I–817. For filing an application for voluntary departure under the Family Unity Program—$120.00.

* * * * *

Form I–824. For filing for action on an approved application or petition—$120.00.

Form I–829. For filing a petition by entrepreneur to remove conditions—$345.00.

* * * * *

Form N–400. For filing an application for naturalization—$225.00.

* * * * *

Form N–565. For filing an application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343(b) or (d) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(c) of the Act—$135.00.

Form N–600. For filing an application for a certificate of citizenship under section 309(c) or section 341 of the Act—$160.00.

Form N–643. For filing an application for a certificate of citizenship on behalf of an adopted child—$125.00.

* * * * *

Dated: August 12, 1998.

Janet Reno,

Attorney General.

[FR Doc. 98–22003 Filed 8–13–98; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–287–AD; Amendment 39–10710; AD 98–17–08]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes, that requires repetitive inspections to detect any discrepancy in the sealwire of the fireguards of the engine fire shut-off system, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent inadvertent closure of the fire shut-off valves due to ineffective or absent sealwires, which could result in in-flight engine shutdown.

DATES: Effective September 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 18, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F.28 Mark 1000, 2000, 3000, and 4000 series airplanes was published in the Federal Register on December 1, 1997 (62 FR 63473). That action proposed to require repetitive inspections to detect any discrepancy in the sealwire of the fireguards of the engine fire shut-off system, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Request for Clarification of Required Actions

One commenter requests clarification as to whether the intent of the proposed AD is to require a check of the switch rigging even if the sealwire is found to be in place, or whether verification of the existence of the sealwire is sufficient for compliance with the AD. The commenter suggests that if only the latter action is required, the proposed AD could be clarified in this regard by specifying accomplishment of the inspection in paragraph (a) of the AD in accordance with Part I only of Fokker Service Bulletin F28/76–20, dated January 1, 1979. The FAA concurs with the commenter's request to clarify the actions required by the AD. The intent of the AD is to require the inspections in accordance with Part I only of the referenced service bulletin. Paragraph (a) of the final rule has been revised accordingly.

Request for Revision of Compliance Intervals

One commenter states that accomplishment of the inspections at compliance intervals of 3,000 flight hours is not effective, since 3,000 flight hours for this operator is approximately 18 months. The commenter suggests that selection of an appropriate inspection interval should be left to each operator, to be justified with its Principal Maintenance Inspector in accordance with its maintenance program. The commenter further suggests that the proposed AD could instead require the inspection to be performed at a regularly scheduled maintenance interval, such as an "A" check.

The FAA does not concur. The FAA normally selects compliance times to coincide with operators' normal maintenance schedules, whenever the unsafe condition is not so urgent that a shorter compliance time is necessary. However, the FAA does not consider it appropriate to base compliance times on indefinite or nonspecific intervals such as "at the next A check." Since maintenance schedules vary from operator to operator, there can be no assurance that the action would be accomplished within the timeframe for safe operation of the aircraft.

In developing an appropriate compliance interval for the inspections required by this AD, the FAA considered the safety implications and operators' normal maintenance schedules for accomplishment of the repetitive inspections of the fireguard sealwire. In consideration of these factors, the FAA finds that the compliance time, as proposed, represents an appropriate and definitive interval in which the required inspections can be accomplished within the fleet and still maintain an adequate level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 49 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,940, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–17–08 Fokker Aircraft B.V.: Amendment 39–10710. Docket 97–NM–287–AD.

Applicability: Model F.28 Mark 1000, F.28 Mark 2000, F.28 Mark 3000, and F.28 Mark 4000 series airplanes; all serial numbers; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent closure of the fire shut-off valves due to ineffective or absent sealwires, which could result in in-flight engine shutdown, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform an inspection of the engine fire shut-off system to detect any discrepancy in the sealwire of the fireguards, in accordance with Part I of the Accomplishment Instructions of Fokker Service Bulletin F28/76–20, dated January 1, 1979. If any discrepancy is detected, prior to further flight, repair it in accordance with the service bulletin. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight hours.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The actions shall be done in accordance with Fokker Service Bulletin F28/76–20, dated January 1, 1979. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA No. 1979–007/2 (A), dated February 28, 1997.

(e) This amendment becomes effective on September 18, 1998.

Issued in Renton, Washington, on August 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–21654 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–248–AD; Amendment 39–10709; AD 98–17–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes, that requires inspection of the wing leading edge sections for the correct amount of bleed air exhaust holes, and corrective actions, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent malfunction of the wing leading edge thermal anti-ice system, which could result in reduced controllability of the airplane and/or reduced structural integrity of the wing due to overheating.

DATES: Effective September 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 18, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Fokker Model F28 Mark 0070 and Mark 0100 series airplanes was published in the **Federal Register** on December 9, 1997 (62 FR 64775). That action proposed to require inspection of the wing leading edge sections for the correct amount of bleed air exhaust holes, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Request To Revise Compliance Time for Follow-On Actions

One commenter supports the requirement for conducting the initial inspection within 60 days, as specified in the proposed AD, but strongly opposes the requirement to further inspect and accomplish leading edge repairs prior to further flight. The commenter notes that Fokker Service Bulletin SBF100–57–032, dated August 21, 1995, was issued over two years ago, and provides a recommended compliance time for accomplishment of these follow-on actions. The commenter states that, since the time to detect the discrepancy is extended an additional 60 days by the proposed AD, it is very improbable that any degradation that may be found will warrant permanent repair prior to further flight. The commenter suggests that, based on the severity of the damage that could be expected, a time scale should be developed correlating the time allowed to accomplish the additional inspections and repair work with the number of holes found missing. The commenter requests that the proposed AD be revised to allow 1,200 flight hours, as a minimum, for accomplishment of the follow-on actions; such a revision would enable the work to be accomplished during a scheduled maintenance period.

The FAA does not concur with the commenter's request. The FAA has determined that, should any missing holes or heat damage be detected during the initial inspection required by this AD, an unsafe condition exists that necessitates repairs prior to further flight in order to adequately address that condition. As a matter of law, in order to be airworthy, an airplane must conform to its type design and be in a condition for safe operation. Apart from the requirements of this AD, if such missing holes or heat damage of the wing leading edge were found on an airplane at any time, the airplane would be rendered unairworthy and, as such,

would require repair prior to further flight.

Further, the commenter has not provided any data to substantiate why continued flight should be allowed with missing bleed air holes in the wing leading edge section, or with heat damage to this area. However, under the provisions of paragraph (c) of the final rule, an operator may request an adjustment to the compliance time, if sufficient data are submitted to justify why such an extension would not compromise safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 131 Fokker Model F28 Mark 0070 and 0100 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $7,860, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–17–07 Fokker: Amendment 39–10709. Docket 97–NM–248–AD.

Applicability: All Model F28 Mark 0070 and Mark 0100 series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the wing leading edge thermal anti-ice system, which could result in reduced controllability of the airplane and/or reduced structural integrity of the wing due to overheating, accomplish the following:

(a) Within 60 days after the effective date of this AD, inspect all wing leading edge sections for the presence of the correct number of bleed air exhaust holes, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–032, dated August 21, 1995. If any missing holes are detected, prior to further flight, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with Part 2 of the Accomplishment Instructions of the service bulletin:

(1) Rework the affected wing leading edge section(s) to add the correct number of holes, and

(2) Perform a visual inspection of the auxiliary spar or front spar, as applicable, to detect heat damage. If any heat damage is detected, prior to further flight, repair the affected structure in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

(b) As of the effective date of this AD, no person shall install on any airplane a wing leading edge section, unless it has been inspected for the presence of the correct number of bleed air exhaust holes, and reworked, if necessary, to add the correct number of holes, in accordance with Fokker Component Service Bulletin D14000–57–004, dated August 21, 1995.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Fokker Service Bulletin SBF100–57–032, dated August 21, 1995; and Fokker Component Service Bulletin D14000–57–004, dated August 21, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., Technical Support Department, P. O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive BLA No. 1995–087 (A), dated August 31, 1995.

(f) This amendment becomes effective on September 18, 1998.

Issued in Renton, Washington, on August 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–21653 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–20–AD; Amendment 39–10708; AD 98–17–06]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes, that requires repetitive inspections to detect fatigue cracking of certain fuselage skin panels, and repair, if necessary. For certain airplanes, this amendment also provides for an optional preventative modification, which, if accomplished, would terminate the repetitive inspections. This amendment is prompted by reports of fatigue cracking of certain fuselage skin panels. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in reduced structural integrity of the airplane, and consequent loss of pressurization.

DATES: Effective September 18, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 18, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes was published in the Federal Register on March 20, 1998 (63 FR 13579). That action proposed to require repetitive inspections to detect fatigue cracking of certain fuselage skin panels, and repair, if necessary. For certain airplanes, that action also proposed to provide for an optional preventative modification, which, if accomplished, would terminate the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposed Rule

Several commenters support the proposed rule.

Request To Refer to Latest Service Information

One commenter requests that the AD also refer to McDonnell Douglas MD–80 Service Bulletin 53–253, as amended by Change Notification 53–253 CN1, dated April 15, 1994. The FAA concurs with this request. The change notification revises certain references used in preparation of the service bulletin, and changes references to kit numbers and contents of fastener kits. The FAA has revised the final rule to state that the actions may be accomplished in accordance with either McDonnell Douglas MD–80 Service Bulletin 53–253, dated March 31, 1994, or McDonnell Douglas MD–80 Service Bulletin 53–253, as amended by Change Notification 53–253 CN1, dated April 15, 1994.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,200 airplanes of the affected design in the worldwide fleet. The FAA estimates that 800 airplanes of U.S. registry will be affected by this AD, that it will take approximately 24 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,152,000, or $1,440 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) 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 final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–17–06 McDonnell Douglas: Amendment 39–10708. Docket 97–NM–20–AD.

Applicability: Model DC–9–80 series airplanes and Model MD–88 airplanes; as listed in McDonnell Douglas MD–80 Service Bulletin 53–253, dated March 31, 1994; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of pressurization due to reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 44,500 total landings, or within 4,500 landings after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current (HFEC) inspection to detect fatigue cracking of the fuselage skin panels between stations Y=160.000 and Y=200.000 at the left side of longeron 22 below the airstair door cutout, in accordance with McDonnell Douglas MD–80 Service Bulletin 53–253, dated March 31, 1994; or McDonnell Douglas MD–80 Service Bulletin 53–253, as amended by Change Notification 53–253 CN1, dated April 15, 1994.

(b) If no cracking is detected, accomplish the actions specified in either paragraph (b)(1) or (b)(2) of this AD, in accordance with McDonnell Douglas MD–80 Service Bulletin 53–253, dated March 31, 1994; or McDonnell Douglas MD–80 Service Bulletin 53–253, as amended by Change Notification 53–253 CN1, dated April 15, 1994; at the time specified.

(1) Perform the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 4,500 landings until the requirements of paragraph (b)(2) of this AD have been accomplished. Or,

(2) Prior to further flight, install the preventative modification in accordance with the service bulletin. Accomplishment of the preventative modification prior to detection of any cracking constitutes terminating action for the repetitive inspection requirements of this AD.

(c) If any cracking is detected within frame stations Y=160.000 and Y=200.000, accomplish the actions specified in either paragraph (c)(1) or (c)(2) of this AD, in accordance with McDonnell Douglas MD–80 Service Bulletin 53–253, dated March 31, 1994; or McDonnell Douglas MD–80 Service Bulletin 53–253, as amended by Change Notification 53–253 CN1, dated April 15, 1994.

(1) Accomplish the actions specified in paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iii), and (c)(1)(iv) of this AD at the times specified.

(i) Prior to further flight, install the temporary repair in accordance with the service bulletin.

(ii) Within 3,000 landings after installation of the temporary repair, and thereafter, at intervals not to exceed 3,000 landings, perform visual inspections to detect cracking of the repaired area, in accordance with the service bulletin.

(iii) Within 4,500 landings after installation of the temporary repair, and thereafter, at intervals not to exceed 4,500 landings, perform HFEC inspections to detect cracking of any area not covered by the temporary doubler repair, in accordance with the service bulletin.

(iv) Within 8,000 landings after installation of the temporary repair, accomplish the permanent repair in accordance with the service bulletin. Accomplishment of the permanent repair constitutes terminating action for the repetitive inspection requirements of this AD.

(2) Prior to further flight, accomplish the permanent repair in accordance with the service bulletin. Accomplishment of the permanent repair constitutes terminating action for the repetitive inspection requirements of this AD.

(d) If any cracking is detected that extends forward of station Y=160.000 or aft of station Y=200.000, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

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

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) Except as provided by paragraph (d) of this AD: The actions shall be done in accordance with McDonnell Douglas MD–80 Service Bulletin 53–253, dated March 31, 1994; or McDonnell Douglas MD–80 Service Bulletin 53–253, as amended by Change Notification 53–253 CN1, dated April 15, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2 60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 18, 1998.

Issued in Renton, Washington, on August 6, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–21652 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–53–AD; Amendment 39–10706; AD 98–17–04]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. HC–E4A–3(A,I,J) Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hartzell Propeller Inc. HC–E4A–3(A,I,J) series propellers. This action requires a one-time inspection of the propeller blade counterweight clamps for thread damage in the bolt holes, and, if necessary, replacement with serviceable parts. This amendment is prompted by a report of a counterweight clamp bolt hole thread failure that resulted in the separation of the counterweight and the separation of a blade following impact with the counterweight. The actions specified in this AD are intended to prevent propeller blade counterweight clamp bolt hole thread failure, which can result in counterweight and propeller blade separation, and possible damage to the aircraft.

DATES: Effective August 31, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 1998.

Comments for inclusion in the Rules Docket must be received on or before October 13, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–53–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ad-engineprop@faa.dot.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634, ATTN: Product Support; telephone (937) 778–4200, fax (937) 778–4321. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: On May 4, 1998, a Raytheon (Beech) 1900D aircraft experienced a Hartzell Propeller Inc. HC–E4A–3(A,I,J) series propeller blade separation in Syracuse, NY. The investigation revealed that a propeller counterweight clamp bolt pulled out from the counterweight clamp assembly and the counterweight separated inflight. The departing counterweight broke the adjacent propeller blade about 12 inches from the hub. Inspection of the counterweight clamp bolt holes revealed that threads in the counterweight clamp bolt hole failed and that the threads had been damaged by cross threading. During the failure investigation, additional counterweight clamps with damaged threads were found. This condition, if not corrected, could result in propeller blade counterweight clamp bolt hole thread failure, which can result in counterweight and propeller blade separation, and possible damage to the aircraft.

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. HC–ASB–61–237, dated July 17, 1998, that describes procedures for inspection of the propeller blade counterweight clamps for thread damage in the bolt holes, and, if necessary, replacement with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design, this AD is being issued to prevent propeller blade counterweight clamp bolt hole thread failure. This AD requires a one-time inspection of the propeller blade counterweight clamps for thread damage in the bolt holes. Based upon the results of the inspection, operators must, if necessary, replace propeller blade counterweight clamps with serviceable parts.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–53–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–17–04 Hartzell Propeller Inc.: Amendment 39–10706. Docket 98–ANE–53–AD.

Applicability: Hartzell Propeller Inc. HC–E4A–3(A,I,J) series propellers, with serial numbers (S/Ns) HJ1 through HJ1040, that have been previously overhauled or have had a counterweight clamp bolt removed for any reason. These propellers are installed on but not limited to Raytheon (Beech) 1900D series aircraft.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the

requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade counterweight clamp bolt hole thread failure, which can result in counterweight and propeller blade separation, and possible damage to the aircraft, accomplish the following:

(a) Perform a one-time inspection of the propeller blade counterweight clamps for thread damage in the bolt holes in accordance with the Accomplishment Instructions of Hartzell Propeller Inc. Alert Service Bulletin (ASB) No. HC–ASB–61–237, dated July 17, 1998, as follows:

(1) For propellers with 2,500 or more hours time in service (TIS) since last overhaul, inspect within 300 hours time in service (TIS), or 45 days after the effective date of this AD, whichever occurs first.

(2) For all other propellers inspect within 600 hours TIS, or 90 days after the effective date of this AD, whichever occurs first.

(3) For propeller blade counterweight clamps that do not meet the return to service criteria stated in the ASB, prior to further flight remove from service propeller blade counterweight clamps and replace and reassemble with serviceable parts in accordance with the ASB.

(4) For propeller blade counterweight clamps that meet the return to service criteria stated in the ASB, reassemble in accordance with the ASB.

(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, Chicago Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following Hartzell Propeller Inc. service documents:

Document No.	Pages	Date
HC–ASB–61–237	1–20	July 17, 1998

Total pages: 20.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634, ATTN: Product Support; telephone (937) 778–4200, fax (937) 778–4321. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on August 31, 1998.

Issued in Burlington, Massachusetts, on August 5, 1998.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 98–21651 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–36]

Removal of Class D Airspace and Class E Airspace; Willoughby, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes Class D airspace and Class E airspace at Willoughby, OH. The air traffic control tower for Willoughby, Lost Nation Airport, OH, has been decommissioned, therefore the required criteria for Class D airspace for the airport is no longer being met. The removal of the Class D airspace also causes the removal of the Class E airspace extensions to the Class D airspace.

EFFECTIVE DATE: 0901 UTC, October 08, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 3, 1998, the FAA proposed to amend 14 CFR part 71 to remove Class D and Class E airspace at Willoughby, OH (63 FR 30156). The proposal was to rescind controlled airspace due to required criteria no longer being met.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be removed subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 removes Class D airspace and Class E airspace at Willoughby, OH. The required criteria for Class D airspace is no longer being met, as the air traffic control tower for Willoughby, Lost Nation Airport, OH, has been decommissioned. The removal of the Class D airspace also causes the removal of the Class E airspace extensions to the Class D airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have 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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL OH D Willoughby, OH [Removed]

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Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AGL OH E4 Willoughby, OH [Removed]

* * * * *

Issued in Des Plaines, Illinois on July 29, 1998.

Richard K. Petersen,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 98–21860 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–10]

Amendment of Class E Airspace; Akron, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Akron, CO, Class E airspace by providing additional controlled airspace to accommodate the development of new Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at Akron-Washington County Airport.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–10, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On June 2, 1998, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by revising the Akron, CO, Class E airspace area (63 FR 29959). This revision provides the additional airspace necessary to encompass the GPS Runway 11 and the GPS Runway 29 SIAP for the Akron-Washington County Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from the surface of the earth, and from 700 feet or more above the surface of the earth, are published in Paragraph 6002 and Paragraph 6005, respectively, of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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 Class E airspace at Akron, CO, by providing the additional airspace necessary to fully contain two new flight procedures at Akron-Washington County Airport. This modification of airspace enlarges the surface area to meet current criteria standards while also adding a ten-mile extension to the southeast in order to contain an associated SIAP holding pattern. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Akron-Washington County Airport and between the terminal and en route transition stages.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ANM CO E2 Akron, CO [Revised]

Akron-Washington County Airport; CO
(Lat. 40°10′32″N, long. 103°13′19″W)
Akron VORTAC
(Lat. 40°09′20″N, long. 103°10′47″W)

Within a 4.1-mile radius of the Akron-Washington County Airport, and within 3.5 miles of each side of the Akron VORTAC 123° radial extending from the 4.1-mile radius to 9.6 miles southeast of the VORTAC.

* * * * *

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

* * * * *

ANM CO E5 Akron, CO [Revised]

Akron-Washington County Airport, CO
[Lat. 40°10′32″N, long. 103°13′19″W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Akron-Washington County Airport, and that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 40°06′35″N, long 102°37′19″W; to lat. 39°48′00″N, long 102°37′00″W;to lat. 39°42′28″N, long. 102°58′15″W; to lat. 40°00′15″N, long. 103°33′32″W; to lat. 40°24′30″N, long. 103°13′52″W; thence to point of beginning; excluding Federal airways and the Denver and Sterling, CO, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on August 4 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–21864 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ANM–01]

Amendment of Class E Airspace; Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Pueblo, CO, Class E airspace by providing additional controlled airspace to accommodate the development of new Standard Instrument Approach Procedures (SIAP) at Pueblo Memorial Airport.

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 98–ANM–01, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On May 28, 1998, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by revising the Pueblo, CO, Class E airspace area (63 FR 29163). This revision provides the additional airspace necessary to encompass two new SIAP's for the Pueblo Memorial Airport, Pueblo, CO. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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 Class E airspace at Pueblo, CO, by providing the additional airspace necessary to fully contain two new flight procedures at Pueblo Memorial Airport. This modification of airspace allows the holding patterns, and the transition procedure for the new SIAP's, to be fully encompassed within controlled airspace. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Pueblo Memorial Airport and between the terminal and en route transition stages.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

ANM CO E5 Pueblo, CO [Revised]

Pueblo Memorial Airport, CO
(Lat. 38°17'21" N, long. 104°29'48" W)

That airspace extending upward from 700 feet above the surface within a 21.8-mile radius of the Pueblo Memorial Airport, and within the 28.8-mile radius of Pueblo Memorial Airport clockwise between the 070° and 133° bearing from the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by lat. 38°30'00" N, on the east by V–169, on the south by V–210, on the west by a line from lat. 37°38'00" N, long. 105°00'02" W; to lat. 38°16'00" N, long. 105°10'02" W; to lat. 38°30'00" N, long. 105°09'02" W; that airspace extending upward from 13,700 feet MSL bounded by a line beginning at lat. 38°16'00" N, long. 105°10'02" W; to lat. 37°38'00" N, long. 105°00'02" W; to lat. 37°34'00" N, long. 105°12'02" W; to lat. 38°10'00" N, long. 105°33'02" W; thence to point of beginning; that airspace extending upward from 11,700 feet MSL bounded by a line beginning at lat. 38°16'00" N, long. 105°10'02" W; to lat. 38°10'00" N, long. 105°33'02" W; to lat 38°30'00" N, long. 105°33'02" W; to lat. 38°30'00" N, long. 105°09'02" W; thence to point of beginning, excluding that airspace within Federal airways and the Colorado Springs, CO Class E area.

* * * * *

Issued in Seattle, Washington, on August 4, 1998.

Glenn A. Adams III,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 98–21863 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–38]

Modification of Class E Airspace; Superior, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Superior, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 03 has been developed for Richard I. Bong Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for Richard I. Bong Airport.

EFFECTIVE DATE: 0901 UTC, October 08, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, June 5, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Superior, WI (63 FR 30663). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, 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 Class E airspace at Superior, WI, to accommodate aircraft executing the proposed GPS Rwy 03 SIAP at Richard I. Bong Airport by increasing the radius of the existing controlled airspace for the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have 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 part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL WI E5 Superior, WI [Revised]

Superior, Richard I. Bong Airport, WI
(Lat. 46°41'23" N, long. 92°05'40" W)

That airspace extending upward from above the surface within a 6.7-mile radius of Richard I. Bong Airport, excluding that airspace within the Duluth International Airport, MN, Class D and Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on July 29, 1998.

Richard K. Petersen,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 98–21861 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–40]

Modification of Class E Airspace; Moorhead, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Moorhead, MN. A VHF Omnidirectional Range-A (VOR–A) Standard Instrument Approach Procedure (SIAP) has been developed for Moorhead Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for Moorhead Municipal Airport.

EFFECTIVE DATE: 0901 UTC, October 08, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 394–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, June 6, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Moorhead, MN (63 FR 30665). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, 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 Class E airspace at Moorhead, MN, to accommodate aircraft executing the proposed VOR–A SIAP at Moorhead Municipal Airport by increasing the radius of the existing controlled airspace for the airport. The area will be depicted on appropriate aeronautical charts.

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

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 of part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL MN E5 Moorhead, MN [Revised]

Moorhead Municipal Airport, MN
(Lat. 46°50'21" N., long. 96°39'47" W.)

That airspace extending upward from 700 feet above the surface within an 8.0-mile radius of the Moorhead Municipal Airport excluding that airspace within the Fargo, ND, Class C and Class E and the Hawley, MN, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on July 29, 1998.

Richard K. Petersen,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 98–21859 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–39]

Modification of Class E Airspace; Glenwood, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E Airspace at Glenwood, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 33 has been developed for Glenwood Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for Glenwood Municipal Airport.

EFFECTIVE DATE: 0901 UTC, October 08, 1988.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, June 5, 1998, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Glenwood, MN (63 FR 30664). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, 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 Class E airspace at Glenwood, MN, to accommodate aircraft executing the proposed GPS Rwy 33 SIAP at Glenwood Municipal Airport by increasing the radius of the existing controlled airspace for the airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have 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 part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9563, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL MN E5 Glenwood, MN [Revised]

Glenwood Municipal Airport, MN
(Lat. 45°38'38" N, long. 95°10'14" W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Glenwood Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on July 29, 1998.

Richard K. Petersen,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 98–21857 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–35]

Establishment of Class E Airspace; Slayton, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Slayton, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 35 has been developed for Slayton Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action creates controlled airspace with a 6.3-mile radius for Slayton Municipal Airport.

EFFECTIVE DATE: 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 3, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Slayton, MN (63 FR 30159). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during positions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, 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 establishes Class E airspace at Slayton, MN, to accommodate aircraft executing the proposed GPS Rwy 35 SIAP at Slayton Municipal Airport by creating controlled airspace for the airport. The area will be depicted on appropriate aeronautical charts.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL MN E5 Slayton, MN [New]

Slayton Municipal Airport, MN
(Lat. 43°59'12" N, long. 95°46'57" W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Slayton Municipal.

* * * * *

Issued in Des Plaines, Illinois on July 29, 1998.

Richard K. Petersen,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 98–21854 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97–ANM–23]

Establishment of VOR Federal Airway; Washington

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays the effective date for the establishment of Federal Airways V–165 and V–287 located in the State of Washington, until further notice. The FAA is taking this action to allow time for additional flight inspection.

DATE: The effective date of 0901 UTC, October 8, 1998, is delayed until further notice.

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

SUPPLEMENTARY INFORMATION: Airspace Docket No. 97–ANM–23, published in the **Federal Register** on July 22, 1998 (63 FR 39235), established V–165 and V–287 in the State of Washington, and was originally scheduled to become effective on October 8, 1998. The effective date of V–165 and V–287 is delayed until further notice to allow time for additional flight inspection.

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

Delay of Effective Date

The effective date of the final rule, Airspace Docket 97–ANM–23, as published in the Federal Register on July 21, 1998 (63 FR 39235), is hereby delayed until further notice.

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

Issued in Washington, DC, on August 10, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–21853 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in September 1998.

EFFECTIVE DATE: September 1, 1998.

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

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during September 1998.

For annuity benefits, the interest assumptions will be 5.40 percent for the first 25 years following the valuation date and 5.25 percent thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.00 percent for the period during which a benefit is in pay status and during any years preceding the benefit's placement in pay status. These annuity and lump sum interest assumptions are unchanged from those in effect for August 1998.

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

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during September 1998, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

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

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

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

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

2. In appendix B, a new entry is added to Table I, and Rate Set 59 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used To Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, . . ., and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*		*
September 1998	.0540	1–25	.0525	>25	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y—n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y—n_1—n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
59	09–1–98	10–1–98	4.00	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 11th day of August 1998.

John Seal,

Acting Executive Director Pension Benefit Guaranty Corporation.

[FR Doc. 98–21849 Filed 8–13–98; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 253

RIN 1010–AC33

Oil Spill Financial Responsibility for Offshore Facilities

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Announcement of public workshops.

SUMMARY: We will hold public workshops in Houston, Texas, New Orleans, Louisiana, and Camarillo, California, on how to comply with the new regulation on Oil Spill Financial Responsibility for Offshore Facilities.

DATES: The workshop dates are: Houston—September 1, 1998, at 9:00 a.m.; New Orleans—September 15, 1998, at 9:00 a.m.; and Camarillo—September 24, 1998, at 9:00 a.m.

ADDRESSES: The workshop locations are: Houston—Marriott West Loop, 1750 West Loop South, Ballroom Salons A through D, Houston, Texas; New Orleans—MMS Gulf of Mexico OCS Region Office, 1201 Elmwood Park Boulevard, Room 111, New Orleans, Louisiana; and Camarillo—MMS Pacific OCS Region Office, 770 Paseo Camarillo, Room 202–A, Camarillo, California.

FOR FURTHER INFORMATION CONTACT: Steve Waddell, Adjudication Unit Supervisor, at (504) 736–1710.

SUPPLEMENTARY INFORMATION: The final regulation on Oil Spill Financial Responsibility for Offshore Facilities was published in the **Federal Register** on August 11, 1998 (63 FR 42699), and the rule will go into effect on October 13, 1998. The purpose of the workshops is to provide people who are affected by the rule with information on how to comply. The workshop format will be an MMS presentation followed by a question and answer session.

Dated: August 11, 1998.

Elmer P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 98–21926 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 83 and 84

Removal of Parts Concerning Standards of Conduct and the Joint Ethics Regulation

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document removes information in title 32 of the Code of Federal Regulations concerning Standards of Conduct and the Joint Ethics Regulation. These parts have served the purpose for which they were intended in the CFR and are no longer necessary.

EFFECTIVE DATE: August 14, 1998.

FOR FURTHER INFORMATION CONTACT: L. Bynum or P. Toppings, 703–697–4111.

SUPPLEMENTARY INFORMATION: DoD Directive 5500.7 (32 CFR part 83) and DoD 5500.7–R (32 CFR Part 84) are available via internet at the following address: http://www.defenselink.mil/dodgc/defense_ethics/. Paper copies of the current documents may be obtained, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

List of Subjects in 32 CFR Part 83 and 84

Conflict of interests.

PARTS 83 AND 84—[REMOVED]

Accordingly, by the authority of 10 U.S.C. 301, 32 CFR parts 83 and 84 are removed.

Dated: August 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–21809 Filed 8–13–98; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0005a, UT–001–0006a, UT–001–0007a, UT–001–0009a, UT–001–0012a, UT–001–0013a; FRL–6140–5]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Listing of Exempt Volatile Organic Compounds, Approval of Minor Rule Changes for Emissions From Air Strippers and Soil Venting Projects, and Repeal of Perchloroethylene Dry Cleaning Plant Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions as

submitted by the Governor of Utah. The intended effect of this action is to approve the Governor's submittals of November 8, 1995, February 12, 1996, November 20, 1996, May 15, 1997, and June 10, 1998, that revised and updated Utah's definition of a volatile organic compound (VOC) in UACR R307–1–1. The November 8, 1995, February 12, 1996, November 20, 1996, and May 15, 1997, revisions were necessary to delete volatile methyl siloxanes, parachlorobenzotrifluoride (PCBTF), acetone, perchloroethylene (PERC), HFC 43–10mee, HCFC 225ca and HCFC 225cb as EPA had previously determined that these compounds have a negligible contribution to tropospheric ozone formation. The June 10, 1998 submittal incorporated the deletion of 16 more pollutants from the federal list that were determined to have a negligible contribution to tropospheric ozone formation; the compounds are: HFC–32, HFC–161, HFC–236fa, HFC–245ca, HFC–245ea, HFC–245eb, HFC–245fa, HFC–236ea, HFC–365mfc, HCFC–31, HCFC–123a, HCFC–151a, $C_4F_9OCH_3$, $(CF_3)_2CFCF_2OCH_3$, $C_4F_9OC_2H_5$, and $(CF_3)_2CFCF_2OC_2H_5$ (compound names only are listed here, refer to 62 FR 44901, August 25, 1997, for the chemical name and 62 FR 44903, August 25, 1997, for the complete list of exempted VOCs). In addition, this action also approves the Governor's February 12, 1996 submittal that included minor revisions to UACR R307–6–1 regarding VOC emissions from air strippers and soil venting operations. EPA is also approving the Governor's November 20, 1996, request for the removal of UACR R307–14–8 which had addressed requirements for perchloroethylene dry cleaning plants located in ozone nonattainment and maintenance areas. This action is being taken under section 110 of the Clean Air Act.

DATES: This direct final rule is effective on October 13, 1998 without further notice, unless EPA receives adverse comments by September 14, 1998. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air Program, Mailcode 8P2–A, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202 and the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114–4820

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: On November 8, 1995, February 12, 1996, November 20, 1996, May 15, 1997, and June 10, 1998, the State of Utah submitted formal revisions to its State Implementation Plan (SIP). The SIP revisions consist of a revision of Utah's definition of a VOC, updated rules for VOC with respect to emissions from air stripper and soil venting operations, and the deletion of the State rule addressing requirements for PERC dry cleaning plants located in ozone nonattainment and maintenance areas.

I. Background

On October 5, 1994, EPA published a final rule (59 FR 50693) that added volatile methyl siloxanes (VMS) and parachlorobenzotrifluoride (PCBTF) to the list of compounds excluded from the Federal definition of a VOC (see 40 CFR 51.100(s)(1)) on the basis that these compounds have negligible contribution to the formation of tropospheric ozone. Similarly, EPA added the following compounds to this list to be excluded from the Federal VOC definition: on June 16, 1995 (60 FR 31633), EPA added acetone, on February 7, 1996 (61 FR 4588), EPA added PERC, on October 8, 1996 (61 FR 52848), EPA added HFC43–10mee, HCFC 225ca, and HCFC 225cb, and on August 25, 1997 (62 FR 44900), EPA added HFC–32, HFC–161, HFC–236fa, HFC–245ca, HFC–245ea, HFC–245eb, HFC–245fa, HFC–236ea, HFC–365mfc, HCFC–31, HCFC–123a, HCFC–151a, $C_4F_9OCH_3$, $(CF_3)_2CFCF_2OCH_3$, $C_4F_9OC_2H_5$, and $(CF_3)_2CFCF_2OC_2H_5$.

The State of Utah maintains its definition of a VOC in UACR R307–1–1, "Foreword and Definitions". Utah does not rewrite its VOC definition when EPA changes the excluded compound list, but instead the State incorporates by reference EPA's definition as defined in 40 CFR 51.100(s)(1) and notes the specific **Federal Register** action where EPA modified the Federal definition. Therefore, based on the above EPA revisions to the Federal VOC definition, the Governor's November 8, 1995, submittal incorporated EPA's October 5, 1994, revision, the Governor's February 12, 1996, submittal incorporated EPA's June 16, 1995, revision, the Governor's November 20, 1996, submittal incorporated EPA's February 7, 1996, revision, the Governor's May 15, 1997, submittal incorporated EPA's October 8, 1996, revision, and the Governor's June 10, 1998, submittal incorporated EPA's August 25, 1997, revision.

In addition to the above, the Governor's November 20, 1996, revision deleted UACR R307–14–8 ("Perchloroethylene Dry Cleaning Plants") which had regulated dry-cleaning plants as a source of VOCs contributing to the formation of tropospheric ozone. This is acceptable to EPA as States have the option to exclude from control those VOC compounds that EPA has found to be negligibly reactive. See, e.g., 61 FR 4588, 4590, February 7, 1996. EPA notes, however, that PERC was listed as a hazardous air pollutant (HAP) under section 112(b) of the CAA. Pursuant to CAA section 112(d), EPA issued two national emission standards for hazardous air pollutants (NESHAP) for two major PERC source categories: PERC dry cleaning (58 FR 49354, September 22, 1993) and halogenated solvent cleaning (59 FR 61801, December 2, 1994). Currently, the use of PERC in dry-cleaning plants is regulated as a HAP in Utah. The provisions to address this HAP are found in 40 CFR 63, subpart M, "National Perchloroethylene Air Emissions Standards for Dry Cleaning Facilities," which were incorporated by reference into Utah's UACR R307–10–2 on February 1, 1995.

Finally, EPA is approving the minor wording changes to UACR R307–6–1 regarding VOC emissions from air strippers and soil venting projects that were submitted by the Governor on February 12, 1996. These changes did not affect the rule's requirements, but merely replaced the title of the Utah Air Conservation Committee with the "Utah Air Quality Board", corrected the spelling of "de minimis", deleted the capitalization of "executive secretary", and changed the old Utah Department of Health statutory citation (26–13–6) to the correct Utah Department of Environmental Quality citation of 19–2–104.

Analysis of the State's Process

The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA provides that each SIP revision be

adopted after going through a reasonable notice and public hearing process prior to being submitted by a State to EPA. EPA has evaluated each of the above Governor's submittals and discusses them below.

A. *November 8, 1995, submittal:* The State held a public hearing on May 2, 1995, and this revision to the State's VOC definition became effective on May 31, 1995. EPA took no action on the Governor's submittal and, by operation of law under the provisions of section 110(k)(1)(B) of the CAA, the submittal became complete on May 8, 1996.

B. *February 12, 1996, submittal:* The State held a public hearing on September 20, 1995, and this revision to the State's VOC definition became effective on October 12, 1995. EPA took no action on the Governor's submittal and, by operation of law under the provisions of section 110(k)(1)(B) of the CAA, the submittal became complete on August 12, 1996.

C. *February 12, 1996:* De Minimis Emissions from Air Strippers and Soil Venting Projects submittal. Under Utah Code 63–46a–9(1) State agencies are to review each rule within five years of its adoption or amendment. This review must determine whether statutory provisions authorizing or requiring the rule remain in place and also must consider any written comments submitted since the rule was enacted or amended. The State agency may continue, amend, or repeal the rule. UACR R307–6 had not been amended since it became effective on October 1, 1990, and, therefore, a five-year review was due on October 1, 1995. The State amended the rule but made only nonsubstantive changes, which are described above. These changes became effective on October 1, 1995. The State did not provide notice and public hearing before adopting the changes, but because of the minor, nonsubstantive nature of the changes, EPA believes that it was not necessary for the State to provide notice and public hearing before adopting these changes. EPA took no action on the Governor's submittal and, by operation of law under the provisions of section 110(k)(1)(B) of the CAA, the submittal became complete on August 12, 1996.

D. *November 20, 1996, submittal:* This submittal involved two revisions. The first changed the State's VOC definition to exclude PERC. A public hearing on this portion of the submittal was held on April 18, 1996, and this revision became effective on June 6, 1996. The second revision involved the removal of UACR R307–14–8, requirements for Perchloroethylene Dry Cleaning Plants. A public hearing on this portion of the submittal was held on June 25, 1996, and this revision became effective on August 8, 1996. EPA took no action on the Governor's submittal and, by operation of law under the provisions of section 110(k)(1)(B) of the CAA, the submittal became complete on May 20, 1997.

E. *May 15, 1997, submittal:* The State held a public hearing on December 17, 1996, and this revision to the State's VOC definition became effective on February 14, 1997. EPA took no action on the Governor's submittal and, by operation of law under the provisions of section 110(k)(1)(B) of the CAA, the submittal became complete on November 15, 1997.

F. *June 10, 1998, submittal:* The State held a public hearing on November 19, 1997, and this revision to the State's VOC definition became effective on January 8, 1998. A letter was sent to the Governor on July 6, 1998 determining that the submittal was complete.

II. Final Action

EPA is approving the Governor's submittals of November 8, 1995, February 12, 1996, November 20, 1996, May 15, 1997, and June 10, 1998, that revised and updated Utah's definition of a volatile organic compound (VOC) in UACR R307–1–1. The November 8, 1995, February 12, 1996, November 20, 1996, and May 15, 1997, revisions were necessary to delete volatile methyl siloxanes, parachlorobenzotrifluoride (PCBTF), acetone, perchloroethylene (PERC), HFC 43–10mee, HCFC 225ca and HCFC 225cb as EPA had previously determined that these compounds have a negligible contribution to tropospheric ozone formation. The June 10, 1998 submittal incorporated the deletion of 16 more pollutants from the federal list that were determined to have a negligible contribution to tropospheric ozone formation; the compounds are: HFC–32, HFC–161, HFC–236fa, HFC–245ca, HFC–245ea, HFC–245eb, HFC–245fa, HFC–236ea, HFC–365mfc, HCFC–31, HCFC–123a, HCFC–151a, $C_4F_9OCH_3$, $(CF_3)_2CFCF_2OCH_3$, $C_4F_9OC_2H_5$, and $(CF_3)_2CFCF_2OC_2H_5$. In addition, this action approves the Governor's February 12, 1996, submittal that included minor revisions to UACR R307–6–1 regarding VOC emissions from air strippers and soil venting operations. EPA is also approving the Governor's November 20, 1996, request for the removal of UACR R307–14–8 which had addressed requirements for perchloroethylene dry cleaning plants located in ozone nonattainment and maintenance areas.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective October 13, 1998 without further notice unless the Agency receives adverse comments by September 14, 1998.

If the EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 13, 1998 and no further action will be taken on the proposed rule.

Although EPA is approving Utah's definitions of VOC which reflect EPA's August 25, 1997 revisions to the federal definition, on April 9, 1998, EPA published a revised definition of VOC (63 FR 17331) which became effective on May 11, 1998. EPA's definition excludes methyl acetate from the definition of VOC on the basis that it is of negligible reactivity and does not contribute to tropospheric ozone formation. The State's definition does not exclude this compound. Therefore, the State's definition of VOC provides for the regulation of methyl acetate, which is no longer considered to be a VOC by EPA.

III . Administrative Requirements

A. Executive Orders 12866 and 13045

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

The final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not

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

C. Unfunded Mandates

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

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

D. Submission to Congress and the Comptroller General

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: July 30, 1998.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart TT—Utah

2. Section 52.2320 is amended by adding paragraph (c) (40) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(40) The Governor of Utah submitted revisions to the Utah State Implementation Plan to revise Utah's definition of a volatile organic compound (VOC) and to include nonsubstantive wording changes regarding VOC emissions from air strippers and soil venting operations. The revisions to the VOC definition, found in UACR R307–1–1, were submitted by the Governor on November 8, 1995, February 12, 1996, November 20, 1996, May 15, 1997, and June 10, 1998. The revisions submitted November 8, 1995, February 12, 1996, November 20, 1996, and May 15, 1997, deleted volatile methyl siloxanes, parachlorobenzotrifluoride (PCBTF), acetone, perchloroethylene (PERC), HFC 43–10mee, HCFC 225ca and HCFC 225cb from the definition of VOCs. The June 10, 1998 submittal incorporated the deletion of 16 more pollutants from the federal list that were determined to have a negligible contribution to tropospheric ozone formation; the compounds are: HFC–32, HFC–161, HFC–236fa, HFC–245ca, HFC–245ea, HFC–245eb, HFC–245fa, HFC–236ea, HFC–365mfc, HCFC–31, HCFC–123a, HCFC–151a, $C_4F_9OCH_3$, $(CF_3)_2CFCF_2OCH_3$, $C_4F_9OC_2H_5$, and $(CF_3)_2CFCF_2OC_2H_5$ (compound names only are listed here, refer to 62 FR 44901, August 25, 1997 for the chemical name and 62 FR 44903, August 25, 1997 for the complete list of exempted VOCs). A second February 12, 1996 Governor's submittal contained minor wording revisions which were made to UACR R307–6–1 regarding VOC emissions from air strippers and soil venting operations. The revision submitted November 20, 1996 also repealed UACR R307–14–8 which had addressed requirements for perchloroethylene dry cleaning plants located in ozone nonattainment and maintenance areas.

(i) Incorporation by reference.

(A) UACR R307–1–1, a portion of Forward and Definitions, definition of VOC, as adopted by the Utah Air Quality Board on January 7, 1998, effective January 8, 1998.

(B) UACR R307–6, a portion of *De minimis* Emissions from Air Strippers and Soil Venting Projects, nonsubstantive wording changes, effective October 1, 1995.

[FR Doc. 98–21748 Filed 8–13–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 037–0080; FRL–6142–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) proposed in the Federal Register on April 30, 1998. This final action will incorporate this rule into the federally approved SIP. The intended effect of finalizing this action is to regulate emissions of volatile organic compounds (VOCs) and oxides of sulfur (SO_X) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rule controls VOC and SO_X emissions from petroleum refinery vacuum-producing devices or systems. Thus, EPA is finalizing a simultaneous limited approval and limited disapproval under CAA provisions regarding EPA action on SIP submittals and general rulemaking authority because the rule, while strengthening the SIP, also does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas. As a result of this limited disapproval EPA will be required to impose highway funding or emission offset sanctions under the CAA unless the State submits and EPA approves corrections to the identified deficiencies within 18 months of the effective date of this disapproval. Moreover, EPA will be required to promulgate a Federal implementation plan (FIP) unless the deficiencies are corrected within 24 months of the effective date of this disapproval.

EFFECTIVE DATE: This action is effective on September 14, 1998.

ADDRESSES: Copies of the rule and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are available for inspection at the following locations:

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

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, DC 20460

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

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is: South Coast Air Quality Management District (SCAQMD), Rule 465, Vacuum-Producing Devices or Systems. This rule was submitted by the California Air Resources Board (CARB) to EPA on June 19, 1992.

II. Background

On April 30, 1998 in 63 FR 23707, EPA proposed granting limited approval and limited disapproval of the following rule into the California SIP: SCAQMD, Rule 465, Vacuum-Producing Devices or Systems. Rule 465 was adopted by SCAQMD on November 1, 1991. This rule was submitted by the CARB, to EPA on June 19, 1992. This rule was submitted in response to EPA's 1988 SIP Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for the above rule and nonattainment area is provided in the proposed rule (PR) cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA's interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the PR. EPA is finalizing the limited approval of this rule in order to strengthen the SIP and finalizing the limited disapproval requiring the correction of the remaining deficiencies. These deficiencies include updating a listing of compounds exempt from the definition of volatile organic compounds to remove carbon tetrachloride and the need to explicitly state recording, reporting and record retention requirements in the rule. These corrections are needed to ensure consistency with EPA's definition of exempt compounds and for enforceability of emission limits provided in the rule. A detailed discussion of the rule provisions and evaluations has been provided in the PR and in the technical support document (TSD) available at EPA's Region IX office (TSD dated 3/23/98 for SCAQMD Rule 465).

III. Response to Public Comments

A 30-day public comment period was provided in 63 FR 23707 dated April 30, 1998. EPA received no comment letters on the proposed rule.

IV. EPA Action

EPA is finalizing a limited approval and a limited disapproval of the above-referenced rule. The limited approval of this rule is being finalized under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited in the sense that the rule strengthens the SIP. However, the rule does not meet the section 182(a)(2)(A) CAA requirement because of the rule deficiencies which were discussed in the PR. Thus, in order to strengthen the SIP, EPA is granting limited approval of this rule under sections 110(k)(3) and 301(a) of the CAA. This action approves the rule into the SIP as federally enforceable rule.

At the same time, EPA is finalizing the limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of Part D of the Act. As stated in the Proposed Rule (PR), upon the effective date of this Final Rule (FR), the 18 month clock for sanctions and the 24 month FIP clock will begin. Sections 179(a) and 110(c). If the State does not submit the required corrections and EPA does not approve the submittal within 18 months of the effective date of the FR, either the highway sanction or the offset sanction will be imposed at the 18 month mark. It should be noted that the rule covered by this FR has been adopted by the SCAQMD and is currently in effect in the SCAQMD. EPA's limited disapproval action will not prevent SCAQMD or EPA from enforcing this rule.

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

V. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an

"economically significant" action under E.O. 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action concerning SIPS on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: July 29, 1998.

Nora L. McGee,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(188)(i)(C)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(188) * * *

(i) * * *

(C) * * *

(*2*) Rule 465, amended on November 1, 1991.

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[FR Doc. 98–21895 Filed 8–13–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300693A; FRL–6021–9]

RIN 2070–AB78

Spinosad; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of spinosad in or on coffee at 0.02 parts per million (ppm). This action is being initiated by EPA under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170). The United States Department of Agriculture/Agricultural Research Service (USDA/ARS) has requested that EPA establish a time-limited tolerance on coffee in order for USDA/ARS to conduct efficacy testing of spinosad to control the Mediterranean Fruit Fly. This testing will be conducted on 80 acres in Hawaii under an Experimental Use Permit (EUP).

DATES: This regulation is effective August 14, 1998. Objections and requests for hearings must be received by EPA on or before Ocotber 13, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300693A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees, P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests

filed with the Hearing Clerk identified by the docket control number, [OPP–300693A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300693A]. No confidential business information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Susan Lewis, Registration Division [7505C], Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–7448, e-mail: lewis.susan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 15, 1998 (63 FR 18329)(FRL–5785–7), EPA established permanent tolerances by removing the time limitation for the tolerance for residues of the insecticide spinosad in or on cottonseed at 0.02 ppm and by establishing tolerances in or on almonds at 0.02 ppm; almond hulls at 2.0 ppm; apples at 0.2 ppm; apple pomace, wet at 0.5 ppm; citrus fruits group at 0.3 ppm; dried citrus pulp at 0.5 ppm; citrus oil at 3.0 ppm; cotton gin byproducts at 1.5 ppm; fruiting vegetables (except cucurbits) group at 0.4 ppm; leafy vegetables (except Brassica vegetables) group at 8.0 ppm; Brassica (cole), leafy vegetables, head and stem subgroup at 2.0 ppm; Brassica (cole), leafy vegetables, greens subgroup at 15.0 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.7 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.04 ppm; meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm; milk fat at 0.5 ppm; and whole milk at 0.04 ppm.

In the **Federal Register** of July 28, 1998 (63 FR 40239)(FRL–6020–6), EPA issued a proposed rule announcing the request for a time-limited tolerance on coffee by USDA/ARS. There were no comments received in response to the proposed rule.

The USDA has requested that EPA establish a time-limited tolerance for residues of spinosad in or on coffee. USDA has requested this tolerance in order to conduct efficacy testing of spinosad for control of the Mediterranean Fruit Fly. This testing will be conducted on 80 acres in Hawaii under an Experimental Use Permit (EUP).

The Agency has concluded that a tolerance of 0.02 ppm (which is the Limit of Quantitation (LOQ) for the analytical method) is adequate for coffee. This is based on a very low application rate and the fact that the hull of the coffee bean is removed. No residues are expected to be found on the coffee beans. The tolerance will expire on August 28, 2000.

I. Risk Assessment and Statutory Findings

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

1. *Threshold and non-threshold effects.* For many animal studies, a dose response relationship can be determined, which provides a dose that causes adverse effects (threshold effects) and doses causing no observed effects (the "no-observed effect level" or "NOEL").

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a "safety factor") of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This hundredfold MOE is based on the same rationale as the hundredfold uncertainty factor.

Lifetime feeding studies in two species of laboratory animals are conducted to screen pesticides for cancer effects. When evidence of increased cancer is noted in these studies, the Agency conducts a weight of the evidence review of all relevant toxicological data including short-term and mutagenicity studies and structure activity relationship. Once a pesticide has been classified as a potential human carcinogen, different types of risk assessments (e.g., linear low dose extrapolations or MOE calculation based on the appropriate NOEL) will be carried out based on the nature of the

carcinogenic response and the Agency's knowledge of its mode of action.

2. *Differences in toxic effect due to exposure duration.* The toxicological effects of a pesticide can vary with different exposure durations. EPA considers the entire toxicity data base, and based on the effects seen for different durations and routes of exposure, determines which risk assessments should be done to assure that the public is adequately protected from any pesticide exposure scenario. Both short and long durations of exposure are always considered. Typically, risk assessments include "acute," "short-term," "intermediate term," and "chronic" risks. These assessments are defined by the Agency as follows.

Acute risk, by the Agency's definition, results from 1–day consumption of food and water, and reflects toxicity which could be expressed following a single oral exposure to the pesticide residues. High end exposure to food and water residues are typically assumed.

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this assessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risk assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1–7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

Intermediate-term risk results from exposure for 7 days to several months. This assessment is handled in a manner similar to the short-term risk assessment.

Chronic risk assessment describes risk which could result from several months to a lifetime of exposure. For this assessment, risks are aggregated considering average exposure from all sources for representative population subgroups including infants and children.

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in groundwater or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a "worst case" estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticides that have established tolerances. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of the existing uses of spinosad. EPA had sufficient data to assess the hazards of spinosad and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of spinosad for those uses. EPA's assessment of the dietary exposures and risks associated with establishing the existing tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by spinosad are discussed below.

1. Acute toxicity studies with technical spinosad (88% – 90.4%): Oral LD_{50} in the rat is > 5,000 milligram/kilogram (mg/kg) for males and females - Toxicity Category IV; dermal LD_{50} in the rat is > 2,800 mg/kg for males and females - Toxicity Category III; inhalation LC_{50} in the rat is > 5.18 mg/L - Toxicity Category IV; primary eye irritation in the rabbit (slight conjunctival irritation) - Toxicity Category IV; primary dermal irritation in the rabbit (no erythema and edema) - Toxicity Category IV. Spinosad is not a sensitizer.

2. Acute toxicity studies with the end-use (44% formulation) product for spinosad: Oral LD_{50} in the rat is > 5,000 mg/kg for males and females - Toxicity Category IV; dermal LD_{50} in the rat is > 2,800 mg/kg for males and females - Toxicity Category III; inhalation LC_{50} in the rat is > 5 mg/L - Toxicity Category IV; primary eye irritation in the rabbit (slight conjunctival irritation) - Toxicity Category IV; primary dermal irritation in the rabbit (slight transient erythema and edema) - Toxicity Category IV; not a sensitizer.

3. In a subchronic feeding study in rats, the no-observed adverse effect level (NOAEL) was 33.9 and 38.8 mg/kg/day for males and females, respectively. The lowest observed effect level (LOEL) was 68.5 and 78.1 mg/kg/day for males and females, respectively based on decreased body weight gain, anemia, and vacuolation in multiple organs (kidney, liver, heart, spleen, adrenals, and thyroid).

4. In a subchronic feeding study in mice, the no observed effect level (NOEL) was 7.5 mg/kg/day and the LOEL was 22.5 mg/kg/day based on cytoplasmic vacuolation in multiple

organs (kidney, liver, heart, stomach, lymphoid organs, and ovary).

5. In a subchronic feeding study in dogs, the NOEL was 4.89 and 5.38 mg/kg/day for males and females, respectively. The LOEL was 9.73 mg/kg/day and 10.5 mg/kg/day based on decreased mean body weights and food consumption, and anemia.

6. In a 21–day dermal study in rats, the NOEL for systemic effects was > 1,000 mg/kg/day (limit dose). No systemic toxicity was observed at any dose tested.

7. In a chronic feeding study in dogs, the NOEL was 2.68 mg/kg/day. The LOEL was 8.22 mg/kg/day based on increased liver enzymes (ALT, AST), triglycerides; vacuolated cells (parathyroid), and arteritis.

8. In an carcinogenicity study in mice, the NOEL was 11.4 mg/kg/day. The LOEL was 50.9 mg/kg/day based on decreased body weight gains, increased mortality, hematologic effects, increased thickening of the gastric mucosa, and histologic changes in the stomach of males.

9. In a chronic feeding/carcinogenicity/neurotoxicity study in rats, the NOEL (systemic) was 9.5 and 12.0 mg/kg/day for males and females, respectively. The LOEL (systemic) was 24.1 and 30.3 mg/kg/day for males and females, respectively based on vacuolation of epithelial follicular cells of the thyroid. The neurological NOEL was 46 and 57 mg/kg/day for males and females, respectively. The neurological LOEL was not determined.

10. In a developmental study in rabbits, the maternal NOEL was ≧ 50 mg/kg/day. The maternal LOEL was not established. The developmental NOEL was ≧ 50 mg/kg/day. The developmental LOEL was not established.

11. In a developmental study in rats, the maternal NOEL was > 200 mg/kg/day. The maternal LOEL was not established. The developmental NOEL was > 200 mg/kg/day. The developmental LOEL was not established.

12. In a two-generation reproduction toxicity study in rats, the systemic NOEL was 10 mg/kg/day. The systemic LOEL was 100 mg/kg/day based on increased organ weights (heart, liver, kidney, spleen, thyroid), histopath lesions in the lungs and mesenteric lymph nodes, stomach (F), and prostate. The reproductive NOEL was 10 mg/kg/day. The reproductive LOEL was 100 mg/kg/day based on decreased litter size, decreased pup survival, decreased body weight, increased incidence of dystocia and/or vaginal bleeding post-partum with associated increased mortality of dams.

13. Studies on gene mutation and other genotoxic effects: In a Gene Mutation Assay (mouse forward mutation) there was no forward mutation induction in mouse lymphoma L5178Y Tk +/- cells at concentrations of 0, 1, 5, 10, 15, 20, or 25 µg/ml without metabolic activation or at concentrations of 15 through 50 µg/ml with metabolic activation. In a Structural Chromosomal Aberration Assay *In vitro* there was no increase in the number of CHO (chinese hamster ovary) cells with chromosomal aberrations at concentrations from 20 to 35 µg/ml (without activation) or concentrations from 100 to 500 µg/ml (with activation). In a Micronucleus Test in mice, there was no increase in the frequencey of micronuclei in bone marrow cells from mice treated at concentrations from 500 to 2,000 µg/ml for 2 days. In Other Genotoxicity Assays, unscheduled DNA synthesis was not induced in adult rat hepatocytes *in vitro* at concentrations of 0.01 to 5 µg/ml tested.

14. The results of three metabolism studies are as follows: i. Approximately 95% of technical spinosad was eliminated by 24 hours mainly in the urine (34%), bile (36%), and tissues and carcass (21%). Metabolites include the glutathione conjugates of the unchanged form as well as N- and O-demethylated forms of XDE-105 (Factor D).

ii. At 100 mg/kg/dose, the radiolabeled XDE-105 (Factor D) was primarily excreted in the feces (68%) after 24–hours. The absorption, distribution, and elimination of 14C-XDE-105 (Factor A) demonstrated no appreciable differences based on dose or repeated dosing.

iii. At high (100 mg/kg) doses, there are no major differences in the bioavailability, routes or rates of excretion or metabolism of 14C-XDE-105 (Factor A) following oral administration.

15. In an acute neurotoxicity study, groups of Fischer 334 rats (10/sex/dose) received a single oral (gavage) administration of spinosad (87.9%) at dose levels of 0, 200, 630, or 2,000 mg/kg. There were no effects on neurobehavioral endpoints or histopathology of the nervous system. For neurotoxicity, the NOEL was ≧ 2,000 mg/kg/day (HDT). A LOEL was not established.

16. In a subchronic neurotoxicity study, groups of Fischer 344 rats (10/sex/dose) were administered diets containing spinosad at levels of 0, 0.003, 0.006, 0.012, or 0.06% (0, 2.2, 4.3, 8.6, or 42.7 mg/kg/day for males and 2.6, 5.2, 10.4, or 52.1 mg/kg/day for females, respectively). There were no effects on neurobehavior endpoints or histopathology of the nervous system. For neurotoxicity, the NOEL was ≧ 42.7 and ≧ 52.1 mg/kg/day in males and females, respectively (HDT).

17. In the 2–year chronic neurotoxicity study, groups of Fischer 344 rats (65/sex/dose) received diets containing spinosad at dose levels of 0, 0.005, 0.02, 0.05, or 0.1% (0, 2.4, 9.5, 24.1, or 49.4 mg/kg/day for males and 0, 3.0, 12.0, 30.3, or 62.2 mg/kg/day for females, respectively). Neurobehavioral testing performed at 3, 6, 9, and 12 months of study was negative, and histopathological evaluation of perfused tissues at study termination did not identify pathology of the central or peripheral nervous system. There was no evidence of neurotoxicity. For neuropathology, the NOEL was 0.1% (≧ 46 mg/kg/day for males and 57 mg/kg/day for females (HDT).

B. Toxicological Endpoints

1. *Acute toxicity.* EPA did not select a dose and endpoint for an acute dietary risk assessment due to the lack of toxicological effects attributable to a single exposure (dose) in studies available in the data base including oral developmental toxicity studies in rats and rabbits. In the acute neurotoxicity study the NOEL was ≧ 2,000 mg/kg/day.

2. *Short - (1 day to 7 days), intermediate- (1 week to several months), and chronic - term occupational and residential dermal and inhalation toxicity.* EPA did not select a dose or endpoint for short-, intermediate and long-term dermal risk assessments because (i) lack of appropriate endpoints; (ii) the combination of molecular structure and size as well as the lack of dermal or systemic toxicity at 2,000 mg/kg/day in a 21-day dermal toxicity study in rats which indicates the lack of dermal absorption; and (iii) the lack of long-term exposure based on the current use pattern. Therefore, a dermal risk assessment is not required. EPA also determined that based on the current use pattern and exposure scenario, and inhalation risk assessment is not required.

3. *Chronic toxicity.* EPA has established the RfD for spinosad at 0.027 mg/kg/day. This RfD is based on a chronic toxicity study in dogs using a NOEL of 2.68 mg/kg/day. The LOEL was 8.46 mg/kg/day based on vacuolation in glandular cells (parathyroid) and lymphatic tissues, arteritis and increases in serum enzymes such as alanine aminotransferase, and aspartate

aminotransferase, and triglyceride levels in dogs fed spinosad in the diet at dose levels of 1.44, 2.68, or 8.46 mg/kg/day for 52 weeks. A hundredfold uncertainty factor (UF) was applied to the NOEL of 2.68 mg/kg/day to account for inter- and intra-species variation.

EPA determined that the 10X factor to account for enhanced sensitivity of infants and children (as required by FQPA) should be removed. Thus, an uncertainty factor of 100 is adequate and the RfD remains at 0.027 mg/kg/day.

The FQPA factor is removed because: (i) the data provided no indication of increased susceptibility of rats or rabbits to *in utero* and/or post-natal exposure to spinosad. In the prenatal developmental toxicity studies in rats and rabbits and the two-generation reproduction study in rats, effects in the offspring were observed only at or below treatment levels which resulted in evidence of parental toxicity. (ii) No neurotoxic signs have been observed in any of the standard required studies conducted. (iii) The toxicology data base is complete and there are no data gaps.

4. *Carcinogenicity.* There is no evidence of carcinogenicity in studies in either the mouse or rat.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.495) for the residues of spinosad in or on almonds at 0.02 ppm; almond hulls at 2.0 ppm; apples at 0.2 ppm; apple pomace, wet at 0.5 ppm; citrus fruits group at 0.3 ppm; dried citrus pulp at 0.5 ppm; citrus oil at 3.0 ppm; cottonseed at 0.02 ppm; cotton gin byproducts at 1.5 ppm; fruiting vegetables (except cucurbits) group at 0.4 ppm; leafy vegetables (except Brassica vegetables) group at 8.0 ppm; Brassica (cole), leafy vegetables, head and stem subgroup at 2.0 ppm; Brassica (cole), leafy vegetables, greens subgroup at 15.0 ppm; fat of cattle, goats, hogs, horses, and sheep at 0.7 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.04 ppm; meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm; milk fat at 0.5 ppm; and whole milk at 0.04 ppm.

For the existing uses referred to above, risk assessments were conducted by EPA to assess dietary exposures and risks from spinosad as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. No acute toxicological endpoints were identified for spinosad due to the lack of toxicological effects attributable to a single exposure (dose). Therefore, the Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

ii. *Chronic exposure and risk.* The RfD used for the chronic dietary analysis is 0.027 mg/kg/day. In conducting this chronic dietary risk assessment, EPA made very conservative assumptions: 100% of citrus, almonds, apples, fruiting (except cucurbit) vegetables, Brassica leafy vegetables, leafy vegetables, cottonseed, and ruminant commodities having spinosad tolerances will contain spinosad residues and those residues will be at the level of the established tolerance. This results in an overestimate of human dietary exposure. Thus, in making a safety determination for this tolerance, EPA is taking into account this conservative exposure assessment.

The existing spinosad tolerances resulted in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD: U.S. population (24% of RfD); nursing infants (< 1 year old)(8% of RfD); non-nursing infants (< 1 year old) (24% of RfD); children (1–6 years old) (34% of RfD); children (7–12 years old) (29% of RfD); Northeast Region (25% of RfD); Western Region (27% of RfD); Non-Hispanic Blacks (27% of RfD); Non-Hispanic others (37% of RfD); females 13+ years, nursing (27% of RfD).

The Agency believes that the addition of a 0.02 ppm tolerance for spinosad on coffee will only change the percent of the RfD used for any of the categories listed above by less than 1%. This is based on the fact that the use will be limited to 80 acres in Hawaii for experimental purposes for period of time not to exceed 2 years.

2. *From drinking water.* The Agency has determined that spinosyns Factor A and Factor D are immobile in soil and will not leach into ground water. Based on structure/activity relationships, the Agency concluded that the spinosad metabolites/fermentation impurities (spinosyns Factor B, Factor B of D, Factor K, and other related Factors) were of no more toxicological concern than the two parent compounds (spinosyns Factor A and Factor D) and therefore, only these were considered in the drinking water assessment. EPA used the "Interim Approach for Addressing Drinking Water Exposure in Tolerance Decision Making" issued on 11/17/97. Thus, the PRZM/EXAMS Models were run to produce estimates of spinosad in surface water. The primary use of these models is to provide a screen for sorting out pesticides for which OPP has a high degree of confidence that the true levels of the pesticide in drinking water will be less than the human health drinking water levels of concern (DWLOCs). A human health DWLOC is the concentration of a pesticide in drinking water which would result in acceptable aggregate risk, after having already factored in all food exposures and other non-occupational exposures for which OPP has reliable data. PRZM/EXAMS was used to conduct a Tier 2 surface water analysis. The Tier 2 estimated drinking water concentration (EEC) of spinosad from surface water sources is not likely to exceed 0.059 µg/l from use on apples, 0.092 µg/l from use on Brassica vegetables, 0.065 µg/l from use on cotton, and 0.075 µg/l from use on citrus.

i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, the Agency concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

ii. *Chronic exposure and risk.* Based on the chronic dietary (food) exposure and using default body weights and water consumption figures, chronic drinking water levels of concern (DWLOC) were calculated. The chronic drinking water exposure and risk estimates are 0.019890 mg/kg/day (690 µg/l DWLOC) for the overall U.S. population; 0.01896 mg/kg/day (570 µg/l DWLOC) for females 13+ years, nursing; and 0.016865 mg/kg/day (170 µg/l DWLOC) for children age 1–6 years.

3. *From non-dietary exposure.* There are no current residential uses for spinosad. However, the proposed use of a 0.5% spinosad product on structural lumber may have residential uses. This product is injected into drilled holes and then sealed after treatment. Due to the lack of toxicity endpoints (hazard) and minimal contact with the active ingredient during and after application, exposure to residential occupants is not expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Spinosad has not yet been grouped with any other insecticides into a class.

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for

understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether spinosad has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, spinosad does not appear to produce a toxic metabolite produced by other substances. For the purposes of these tolerance actions, therefore, EPA has not assumed that spinosad has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

Chronic risk. The following information is based on the review of the existing uses of spinosad: Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to spinosad from food will utilize 24% of the RfD for the U.S. population. For the most highly exposed populations subgroup, children (1–6 years old), chronic dietary (food only) exposure occupies 34% of the RfD. This is a conservative risk estimate for reasons described above. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The chronic DWLOC for the infants and children subgroup is 170 parts per billion (ppb). The chronic modeling estimates (EECs) for spinosad residues in surface water are as high as 0.092 ppb from use on Brassica leafy vegetables. The maximum estimated concentrations of spinosad in surface water are less than EPA's levels of concern for spinosad in drinking water as a contribution to chronic aggregate exposure. Taking into account present uses and uses proposed in this risk assessment, EPA concludes with reasonable certainty that residues of spinosad in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Therefore, the Agency concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to spinosad residues from food and water.

No dermal or inhalation endpoints were identified. Due to the nature of the non-dietary use, EPA believes that the use of spinosad in treating structural lumber will not result in any exposure through the oral route. Therefore, the chronic aggregate risk is the sum of food and water.

Based on the above information, the Agency concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to spinosad from food and water resulting from the addition of the time-limited experimental use on coffee as described above.

E. Aggregate Cancer Risk for U.S. Population

The RfD Committee determined that there is no evidence of carcinogenicity in studies in either the mouse or rat. Therefore, a carcinogenic risk assessment is not required.

F. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of spinosad, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

b. *Developmental toxicity studies.* i. In a prenatal developmental toxicity study, groups of pregnant Sprague-Dawley rats (30/group) received oral (gavage) administration of spinosad (88.6%) in aqueous 0.5% methycellulose at dose levels of 0, 10, 50, 200 mg/kg/day during gestation days 6 through 17. For maternal toxicity, the NOEL was ≧ 200 mg/kg/day (HDT); a LOEL was not established. Marginal maternal toxicity was reported at this dose level (decreased body weight gain). Based upon the results of a range-finding study, which showed maternal toxicity (body weight and food consumption decreases at 100 and 300 mg/kg/day), the dose level of 200 mg/kg/day in the main study was considered adequate. For developmental toxicity, the NOEL was > 200 mg/kg/day; a LOEL was not

established. In the range-finding study, fetal body weight decrements occurred at 300 mg/kg/day.

ii. In a prenatal developmental toxicity study, groups of pregnant New Zealand White rabbits (20/group) received oral (gavage) administration of spinosad (88.6%) in 0.5% aqueous methyl cellulose at doses of 0, 2.5, 10, or 50 mg/kg/day during gestation days 7 through 19. For maternal toxicity, the NOEL was ≧ 50 mg/kg/day (HDT); a LOEL was not established. At this dose, slight body weight loss was observed in the first few days of dosing, but this finding was not supported by other signs. In the range-finding study, inanition was observed at doses of 100, 200, and 400 mg/kg/day, with significant decreases in body weight gain during dosing. All does at these dose levels were sacrificed prior to scheduled termination; no fetal data were available. No evidence of developmental toxicity was noted. For developmental toxicity, the NOEL was ≧ 50 mg/kg/day; a LOEL was not established. (No fetal effects were noted for fetuses of the range-finding study at doses up to 50 mg/kg/day).

c. *Reproductive toxicity study.* In a two-generation reproduction study, groups of Sprague-Dawley rats (30/sex/group) received diets containing spinosad (88%) at dose levels of 0, 0.005, 0.02, or 0.2% (3, 10, or 10 mg/kg/day, respectively) for two successive generations. For parental systemic toxicity, the NOEL was 0.02% (10 mg/kg/day) and the LOEL was 0.2% (100 mg/kg/day), based on increased heart, kidney, liver, spleen, and thyroid weights (both sexes), histopathology in the spleen and thyroid (both sexes), heart and kidney (males), and histopathologic lesions in the lungs and mesenteric lymph nodes (both sexes), stomach (females), and prostate. For offspring toxicity, the NOEL was 0.02% (10 mg/kg/day) and the LOEL was 0.2% (100 mg/kg/day) based on decreased litter size, survival (F2), and body weights. Reproductive effects at that dose level included increased incidence of dystocia and/or vaginal bleeding after parturition with associated increase in mortality of dams.

d. *Neurotoxicity.* i. In an acute neurotoxicity study, groups of Fischer 344 rats (10/sex/dose) received a single oral (gavage) administration of spinosad (87.9%) at dose levels of 0, 200, 630, or 2,000 mg/kg. There were no effects on neurobehavioral endpoints or histopathology of the nervous system. For neurotoxicity, the NOEL was > 2,000 mg/kg (HDT); a LOEL was not established.

ii. In a subchronic neurotoxicity study, groups of Fisher 344 rats (10/sex/dose) were administered diets containing spinosad at levels of 0, 0.003, 0.006, 0.012, or 0.06% (0, 2.2, 4.3, 8.6, or 42.7 mg/kg/day for males and 2.6, 5.2, 10.4, or 52.1 mg/kg/day for females, respectively). There were no effects on neurobehavioral endpoints or histopathology of the nervous system. For neurotoxicity, the NOEL was ≧ 42.7 for males and ≧ 52.1 mg/kg/day for females (HDT).

iii. In the 2–year chronic toxicity study, groups of Fischer 344 rats (65/sex/dose) received diets containing spinosad at dose levels of 0, 0.005, 0.02, 0.05, or 0.1% (0, 2.4, 9.5, 24.1, or 49.4 mg/kg/day for males and 0, 3.0, 12.0, 30.3, or 62.2 mg/kg/day for females, respectively). Neurobehavioral testing performed at 3, 6, 9, and 12 months of study was negative, and histopathological evaluation of perfused tissues at study termination did not identify pathology of the central or peripheral nervous system. There was no evidence of neurotoxicity. For neuropathology, the NOEL was 0.1% (> 49.4 mg/kg/day for males and 62.8 mg/kg/day for females).

e. *Pre- and post-natal sensitivity.* There was no increased susceptibility to rats or rabbits following *in utero* and/or postnatal exposure to spinosad.

f. *Conclusion.* The data provided no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to spinosad. In the prenatal developmental toxicity studies in rats and rabbits and the two-generation reproduction study in rats, effects in the offspring were observed only at or below treatment levels which resulted in evidence of parental toxicity. In addition, all neurotoxicity studies were negative for effects on the central or peripheral nervous system.

EPA determined that the 10X factor to account for enhanced sensitivity of infants and children (as required by FQPA) should be removed. The FQPA factor is removed because (i) the data provided no indication of increased susceptibility of rats or rabbits to *in utero* and/or post natal exposure to spinosad. In the prenatal developmental toxicity studies in rats and rabbits and the two-generation reproduction study in rats, effects in the offspring were observed only at or below treatment levels which resulted in evidence of parental toxicity. (ii) No neurotoxic signs have been observed in any of the standard required studies conducted. (iii) The toxicology data base is complete and there are no data gaps.

2. *Acute risk.* An acute risk assessment is not required because no acute toxicological endpoints were identified for spinosad.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to spinosad from food will utilize 34% of the RfD for children age 1–6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to spinosad residues.

Based on the above information, EPA concludes that there is a resonable certainty that no harm will result to infants and children from aggregate exposure to spinosad residues as a result of the use on coffee in an experimental use program in Hawaii.

G. Endocrine Disruption

EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect..." The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

III. Other Considerations

A. Metabolism In Plants and Animals

EPA has reviewed the results of plant metabolism studies (apples, cabbage, cotton, tomatoes, turnips) and livestock metabolism studies (goat and hen). The metabolism of spinosad in plants and animals is adequately understood for the purposes of these tolerances. Based on structure/activity relationships, EPA concluded that the spinosad metabolites/fermentation impurities (spinosyns Factor B, Factor B or D, Factor K, and other related Factors) were of no more toxicological concern than the two parent compounds (spinosyns Factor A and Factor D).

EPA focused on the following data/information: the overall low toxicity of

spinosad; the low levels of metabolites/fermentation impurities present; and that spinosad appears to photodegrade rapidly and become incorporated into the general carbon pool. EPA concluded that only 2 parent compounds (spinosyns Factor A and Factor D) need to be included in the tolerance expression and used for dietary risk assessment purposes.

B. Analytical Enforcement Methodology

Method GRM 94.02 (method for determination of spinosad residues in cottonseed and related commodities using HPLC/UV) underwent successful independent lab validation and EPA lab validation and has been submitted to FDA for inclusion in PAM II as Method I. Additional methods have been submitted for other crop matrices (leafy vegetables - GRM 95.17; citrus - GRM 96.09; tree nuts - GRM 96.14; fruiting vegetables - GRM 95.04; and cotton gin byproducts - GRM 94.02.S1). All of these methods are essentially similar to GRM 94.02 and have been submitted to FDA for inclusion in PAM II as letter methods. These methods are adequate for regulation of the tolerance expression.

Method RES 94094 (method for determination of spinosad residues in ruminant commodities using HPLC/UV) underwent successful independent lab validation and EPA lab validation and has been submitted to FDA for inclusion in PAM II as Method I. This method is adequate for regulation of the tolerance expression.

Method RES 95114 (method for determination of spinosad residues in ruminant commodities using immunoassay) underwent successful independent lab validation and EPA lab validation and has been submitted to FDA for inclusion in PAM II as Method I. This method is adequate for regulation of the tolerance expression.

C. International Residue Limits

No CODEX, Canadian, or Mexican MRLs have been established for residues of spinosad on any crops.

IV. Conclusion

Therefore, a time-limited tolerance is established for residues of spinosad in coffee at 0.02 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by Ocotber 13, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300693A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this rulemaking, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This final rule establishes a time-limited tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in

accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the [time-limited tolerance] in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 180

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

Dated: August 11, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

Authority: 21 U.S.C. 346a and 371.

2. In § 180.495, paragraph (a) is revised to read as follows:

§ 180.495 Spinosad; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide Spinosad. Factor A is 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-L-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydro-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,6b-tetradecahydro-14-methyl-1*H*-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione. Factor D is 2-[(6-deoxy-2,3,4-tri-*O*-methyl-α-L-manno-pyranosyl)oxy]-13-[[5-(dimethylamino)-tetrahydri-6-methyl-2*H*-pyran-2-yl]oxy]-9-ethyl-2,3,3a,5a,5b,6,9,10,11,12,13,14,16a,16b-tetradecahydro-4,14-dimethyl-1*H*-as-Indaceno[3,2-d]oxacyclododecin-7,15-dione.

Commodity	Parts per million	Expiration/Revocation Date
Almonds	0.02	None
Almond hulls	2.0	None
Apples	0.2	None
Apple pomace, wet	0.5	None
Brassica (cole), leafy vegetables, greens subgroup	10.0	None
Brassica (cole), leafy vegetables, head and stem subgroup	2.0	None
Cattle, fat	0.6	None
Cattle, meat	0.04	None
Cattle, meat byproducts	0.2	None
Citrus fruits group	0.3	None
Citrus oil	3.0	None
Citrus pulp, dried	0.5	None
Coffee	0.02	8/28/00
Cotton gin byproducts	1.5	None
Cottonseed	0.02	None
Fruiting vegetables (except cucurbits) group	0.4	None
Goat, fat	0.6	None
Goat, meat	0.04	None
Goat, meat byproducts	0.2	None
Hogs, fat	0.6	None
Hogs, meat	0.04	None
Hogs, meat byproducts	0.2	None
Horses, fat	0.6	None
Horses, meat	0.04	None
Horses, meat byproducts	0.2	None
Leafy vegetables (except Brassica vegetables) group	8.0	None
Milk, fat	0.5	None
Milk, whole	0.04	None
Sheep, fat	0.6	None
Sheep, meat	0.04	None
Sheep, meat byproducts	0.2	None

* * * * *

FR Doc. 98–21893 Filed 8–13–98; 8:45 am

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–37

[FPMR Amendment G–113]

RIN 3090–AG13

Aviation, Transportation, and Motor Vehicles

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: This regulation revises FPMR Subpart 101–37.11 to comply with OMB Circular A–126 and to incorporate changes brought about by the passage of Pub. L. 103–411, dated April 23, 1995.

EFFECTIVE DATE: August 14, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Zuidema, Director, Aircraft Management Policy Division (MTA), 202–219–1377.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866.

REGULATORY FLEXIBILITY ACT: This rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

PAPERWORK REDUCTION ACT: GSA has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel. This rule is written in a "plain language" style.

What is the "Plain Language" Style of Writing?

The "plain language" style of regulation writing is a new, simpler to read and understand, question and answer regulatory format.

How Does the "Plain Language" Style of Regulation Writing Affect Employees?

A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

List of Subjects in 41 CFR Part 101–37

Aircraft, Government property management.

For the reasons set forth in the preamble, 41 CFR part 101–37 is amended as follows:

PART 101–37—GOVERNMENT AVIATION ADMINISTRATION AND COORDINATION

Subpart 101–37.11 is revised to read as follows:

Subpart 101–37.11—Aircraft Accident and Incident Reporting and Investigation

Authority: Sec. 205 (c), 63 Stat. 390; 40 U.S.C. 486 (c); the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–70 Comp., p. 939; and OMB Circular No. A–126 (Revised May 22, 1992).

Subpart 101–37.11—Aircraft Accident and Incident Reporting and Investigation

§ 101–37.1100 What are my general responsibilities for aircraft accident and incident reporting and investigation?

You must:

(a) Develop a Federal agency specific aircraft accident and incident response plan for your agency;

(b) Be prepared to participate in National Transportation Safety Board (NTSB) investigations of Federal agency aircraft accident or incidents involving your agency;

(c) Conduct a parallel investigation of an aviation accident/incident involving your agency aircraft as appropriate;

(d) Report any condition, act, maintenance problem, or circumstance which has potential to cause an aviation related mishap;

(e) Provide training to your agency personnel who may be asked to participate in an NTSB investigation;

(f) Assure that your reporting requirements are in compliance with the NTSB definitions contained in 49 CFR 830.2; and

(g) Refer to 49 CFR part 830 for further details when required to report an aircraft accident, incident, or overdue aircraft to the NTSB.

§ 101–37.1101 What aircraft accident and incident response planning must I do?

You must develop an agency specific aircraft accident and incident response plan which include the following:

(a) Reporting aircraft accidents, incidents, and overdue or missing aircraft,

(b) Wreckage site safety,

(c) Wreckage security,

(d) Evidence preservation, and

(e) A point of contact list with current telephone numbers for fire, crash rescue, medical, and law enforcement support personnel and trained agency accident investigators.

§ 101–37.1102 When must I give initial notification of an aircraft accident, incident, and overdue aircraft?

You must assure that the operator of any aircraft that is owned, leased, or under your exclusive use and operational control for more than 180 days immediately notifies the nearest NTSB field office when an accident or incident occurs.

§ 101–37.1103 What information must I give in an initial notification of an aircraft accident, incident, or overdue aircraft?

You must assure that the notification contains the following information, if available:

(a) Type and registration of the aircraft;

(b) Name of the owning agency;

(c) Name of the pilot-in-command;

(d) Date and time of the accident;

(e) Last point of departure and the point of intended landing;

(f) Position of the aircraft with reference to a geographical point;

(g) Number of persons aboard, number fatally injured, and number seriously injured;

(h) Nature of the accident, extent of damage, and the weather; and

(i) A description of any explosives, radioactive materials, or any other dangerous substances carried on the aircraft.

§ 101–37.1104 What are my responsibilities for preserving aircraft wreckage, cargo, mail, and records resulting from aircraft accidents and incidents?

You must assure that the operator of your aircraft is responsible for preserving to the extent possible any wreckage, cargo, and mail carried aboard the aircraft that was involved in an accident or incident. All records such as history data recordings of flight and maintenance information and voice recordings pertaining to the flight and all records pertaining to the operation and maintenance of the aircraft and to the airmen must be preserved until the NTSB takes custody. If items must be moved from the aircraft or the scene of the accident/incident for safety or health reasons, sketches, descriptive notes, or photographs should be made if possible of the original positions and conditions of items moved. If classified material is involved in an accident or incident, you must coordinate its protection and recovery with the National Transportation Safety Board as required by 49 CFR 830.10 and 831.12.

§ 101–37.1105 What must I report regarding an aircraft accident, incident, or overdue aircraft?

You must assure that the operator of your aircraft files a report on NTSB Form 6120.1 or 7120.2 within 10 days after an accident, or after 7 days if an overdue aircraft is still missing. A report involving a reportable incident shall be filed only if requested by the NTSB.

§ 101–37.1106 What must I do when the NTSB investigates an accident or incident involving my aircraft?

You should request designation as "party" to the investigation in accordance with 49 CFR 831.11 and assist the NTSB to the maximum extent possible. The NTSB shall allow you to participate in any investigation, except that you may not participate in the NTSB's determination of the probable cause of the accident. You may conduct your own parallel investigation. You and the NTSB must exchange appropriate information obtained or developed in the course of the investigation(s) in a timely manner.

§ 101–37.1107 What must I do if I observe a condition, act, maintenance problem, or circumstance that has the potential to cause an aviation related mishap?

You must report such observations to a senior aviation safety manager of your agency.

§ 101–37.1108 Why is it important that I be provided aircraft accident/incident related guidance in the form of this subpart, in addition to that found in 49 CFR parts 830 and 831?

You may be excluded from some civil standards because of your unique operational and/or airworthiness requirements. Therefore, in addition to meeting the requirements found in 49 CFR parts 830 and 831, you must do the following: Make personnel who are knowledgeable about your missions and trained as aircraft accident investigators available to work with the NTSB. Develop accident and incident response plans. And understand that a parallel investigation may be conducted. Such teamwork will enhance both NTSB's and your aircraft accident investigation and prevention efforts.

§ 101–37.1109 What training must I have to participate in an NTSB investigation?

You must be trained in aircraft accident investigation, reconstruction, and analysis. You must also receive aircraft accident investigation recurrency training and be familiar with NTSB accident investigation procedures.

Dated: February 23, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98–21735 Filed 8–13–98; 8:45 am]

BILLING CODE 6820–24–P

Proposed Rules

Federal Register
Vol. 63, No. 157
Friday, August 14, 1998

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AI09

Reduction in Force Service Credit; Retention Records

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations that cover service credit for retention purposes. These proposed regulations also cover access to retention records by employees and their representatives.

DATES: Written comments will be considered if received no later than October 13, 1998.

ADDRESSES: Send or deliver written comments to: Associate Director for Employment Service, Room 6F08, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Jacqui R. Yeatman at (202) 606–0960, FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION:

Background

OPM's retention regulations found in part 351 are published under authority of 5 U.S.C. 3502(a). The statute provides that OPM's reduction in force regulations must give effect to four factors in releasing employees: (1) tenure of employment (i.e., type of appointment); (2) veterans' preference; (3) length of service; and (4) performance ratings.

These proposed regulations cover the crediting of civilian and uniformed service for purposes of reduction in force competition under part 351 of this title. Specifically, these regulations clarify longstanding OPM policy on what types of service are creditable when an agency establishes the order of retention for competing employees in a reduction in force.

These regulations are further implemented through instructions found in the OPM Operating Manual, "The Guide to Processing Personnel Actions," Chapter 6, "Determining Creditable Service and Determining Service Computation Dates (SCD's)."

These proposed regulations also cover who has access to reduction in force retention records, when that access is available, and what records are available for review.

Service Credit

Proposed § 351.503(a) provides that all civilian service as a Federal employee, as defined in 5 U.S.C. 2105(a), is creditable for purposes of determining the reduction in force rights of a competing employee. Civilian service that does not meet the definition set forth in 5 U.S.C. 2105(a) would be creditable for retention purposes only if specifically authorized by statute.

Proposed § 351.503(b)(1) notes that, except as provided in § 351.501(b)(2) and (b)(3), all active duty in a uniformed service, as defined in 5 U.S.C. 2101(3), is creditable for purposes of determining employees' retention rights.

Consistent with 5 U.S.C. 3502(a)(A) and (b), a retired member of a uniformed service who is receiving retired pay based upon 20 or more years of active service in the Armed Forces is generally entitled to credit under this part only for the length of time in active service in the Armed Forces during a war, or active duty served in a campaign or expedition for which a campaign badge or expeditionary medal has been authorized. The employee is entitled to the total length of time in active service in the Armed Forces only if the employee is considered a preference eligible under 5 U.S.C. 3501(a)(3).

Proposed § 351.503(b)(3) provides that an employee may not receive dual retention service credit for service performed on active duty in the Armed Forces that was performed during concurrent civilian employment as a Federal employee.

Proposed § 351.503(c)(1) provides that the agency is responsible for establishing both the service computation date, and the adjusted service computation date, applicable to each employee competing for retention. Also, the agency is responsible for adjusting the service computation dates to withhold retention service credit for noncreditable service.

Proposed § 351.503(c)(2) provides that the service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section.

Proposed § 351.503(c)(3) provides that the adjusted service computation date includes all actual creditable service under sections 351.503(a) and (b), and additional retention service credit for performance authorized by section 351.504(d).

Proposed § 351.503(d) covers the calculation of the service computation date for retention purposes.

Proposed § 351.503(e) covers the calculation of the adjusted service computation date that includes additional service credit for retention purposes that is authorized by section 351.504(d).

Retention Records

Proposed § 351.505(a) provides that the agency is responsible for maintaining the correct personnel records that are used to determine employees' retention standing.

Proposed § 351.505(b) provides that the agency must allow its retention registers and related records to be inspected by an employee of the agency who has received a specific reduction in force notice, and/or the employee's representative if the representative is acting on behalf of that individual employee. Proposed § 351.505(b) also provides that an authorized representative of OPM has the right to review an agency's retention records.

Proposed § 351.505(c) provides that an employee who has received a specific notice of reduction in force has the right to review any completed records used by the agency in a reduction in force action that was taken, or will be taken, against the employee.

Proposed § 351.505(d) provides that an employee who has not received a specific reduction in force notice has no right to review the agency's retention registers and related records.

Proposed § 351.505(e) provides that the agency is responsible for ensuring that each employee's access to retention records is consistent with both the Freedom of Information Act and the Privacy Act.

Proposed § 351.505(f) provides that the agency must preserve all registers and records relating to a reduction in

force for at least 1 year after the date the agency issues specific reduction in force notices.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects Federal employees.

List of Subjects in Part 351

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM proposes to amend part 351 of title 5, Code of Federal Regulations, as follows:

PART 351—REDUCTION IN FORCE

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 1302, 3502, 3503; sec. 351.801 also issued under E.O. 12828, 58 FR 2965.

2. Section 351.503 is revised to read as follows:

§ 351.503 Length of service.

(a) All civilian service as a Federal employee, as defined in 5 U.S.C. 2105(a), is creditable for purposes of this part. Civilian service performed in employment that does not meet the definition of *Federal employee* set forth in 5 U.S.C. 2105(a) is creditable for purposes of this part only if specifically authorized by statute as creditable for retention purposes.

(b)(1) As authorized by 5 U.S.C. 3502(a)(A), all active duty in a uniformed service, as defined in 5 U.S.C. 2101(3), is creditable for purposes of this part, except as provided in paragraphs (b)(2) and (b)(3) of this section.

(2) As authorized by 5 U.S.C. 3502(a)(B), a retired member of a uniformed service who is covered by § 351.501(d) is entitled to credit under this part only for:

(i) The length of time in active service in the Armed Forces during a war, or in a campaign or expedition for which a campaign or expedition badge has been authorized; or

(ii) The total length of time in active service in the Armed Forces if the employee is considered a preference eligible under 5 U.S.C. 2108 and 5 U.S.C. 3501(a), as implemented in § 351.501(d).

(3) An employee may not receive dual service credit for purposes of this part for service performed on active duty in the Armed Forces that was performed during concurrent civilian employment as a Federal employee, as defined in 5 U.S.C. 2105(a).

(c)(1) The agency is responsible for establishing both the service computation date, and the adjusted service computation date, applicable to each employee competing for retention under this part. If applicable, the agency is also responsible for adjusting the service computation date and the adjusted service computation date to withhold retention service credit for noncreditable service.

(2) The service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section.

(3) The adjusted service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section, and additional retention service credit for performance authorized by § 351.504(d).

(d) The service computation date is computed on the following basis:

(1) The effective date of appointment as a Federal employee under 5 U.S.C. 2105(a) when the employee has no previous creditable service under paragraph (a) or (b) of this section; or if applicable,

(2) The date calculated by subtracting the employee's total previous creditable service under paragraph (a) or (b) of this section from the most recent effective date of appointment as a Federal employee under 5 U.S.C. 2105(a).

(e) The adjusted service computation date is calculated by subtracting from the date in paragraph (d)(1) or (d)(2) of this section the additional service credit for retention authorized by § 351.504(d).

3. § 351.505 is revised to read as follows:

§ 351.505 Records.

(a) The agency is responsible for maintaining correct personnel records that are used to determine the retention standing of its employees competing for retention under this part.

(b) The agency must allow its retention registers and related records to be inspected by:

(1) An employee of the agency who has received a specific reduction in force notice, and/or the employee's representative if the representative is acting on behalf of the individual employee; and

(2) An authorized representative of OPM.

(c) An employee who has received a specific notice of reduction in force under authority of subpart H of this part has the right to review any completed records used by the agency in a reduction in force action that was taken, or will be taken, against the employee, including:

(1) The complete retention register with the released employee's name and other relevant retention information (including the names of all other employees listed on that register, their individual service computation dates calculated under § 351.503(d), and their adjusted service computation dates calculated under § 351.503(e)) so that the employee may consider how the agency constructed the competitive level, and how the agency determined the relative retention standing of the competing employees; and

(2) The complete retention registers for other positions that could affect the composition of the employee's competitive level, and/or the determination of the employee's assignment rights (e.g., registers to which the released employee may have potential assignment rights under § 351.701(b) and (c)).

(d) An employee who has not received a specific reduction in force notice has no right to review the agency's retention registers and related records.

(e) The agency is responsible for ensuring that each employee's access to retention records is consistent with both the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a).

(f) The agency must preserve all registers and records relating to a reduction in force for at least 1 year after the date it issues a specific reduction in force notice.

[FR Doc. 98–21802 Filed 8–13–98; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 810

United States Standards for Sorghum

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is conducting a review of the United States Standards for Sorghum. GIPSA invites comments and suggested changes to these standards.

DATES: To be assured of consideration, written comments must be filed before October 13, 1998.

ADDRESSES: Written comments must be sent to Sharon Vassiliades, GIPSA, USDA, STOP 3649, 1400 Independence Avenue, SW, Washington, DC 20250–3649; FAX to (202) 720–4628; or e-mail svassili@fgisdc.usda.gov.

All comments received will be made available for public inspection in Room 0623, USDA South Building, 1400 Independence Avenue, SW, Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: John Giler, telephone (202) 720–0252.

SUPPLEMENTARY INFORMATION: GIPSA is conducting a review of the United States Standards for Sorghum in Subpart I of 7 CFR part 810 at sections 810.1401–810.1405.

During this review, GIPSA will assess the need for revisions on the various sections of the United States Standards for Sorghum, the potential for improvements, and language clarity.

GIPSA invites any comments and/or suggestions concerning these standards, including those addressing sorghum classification and/or definition of sorghum, definition of broken kernels and foreign material, and the definition for damaged kernels.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71, *et seq.*)

Dated: August 7, 1998.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 98–21904 Filed 8–13–98; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 502

[No. 98–74]

RIN 1550–AB20

Assessments and Fees

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to amend its regulations to more equitably impose assessments on savings associations. OTS's experience has shown that the current assessment structure may cause some savings associations to pay assessments over or under OTS's costs of supervising those savings associations. The proposal seeks to minimize these disparities. In particular, the proposal would increase assessments on most institutions with significant off-balance sheet activities. In the aggregate, the proposed changes should initially result in decreased assessments with respect to healthy institutions without significant off-balance sheet activities. The proposal would also clarify certain other matters involving assessments and other fees and would revise the entire assessment and fee regulation using a plain language format.

DATES: Comments must be received on or before October 13, 1998.

ADDRESSES: Send comments to Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 98–74. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 a.m. to 5:00 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906–7755; or by e-mail: public.info@ots.treas.gov. Comments will be available for inspection at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Christine Harrington, Counsel (Banking and Finance), (202) 906–7957, or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office; or Eric Hirschhorn, Principal Financial Economist, (202) 906–7350, Research & Analysis; William Brady, Acting Director, Planning & Budget, (202) 906–7408, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS is charged with the mission of examining, regulating, and providing for the safe and sound operation of savings associations.[1] Under 12 U.S.C. 1467, OTS funds these operations through assessments on savings associations and through other fees, as necessary and appropriate.

In the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), Congress amended OTS's statutory assessment authority by removing a provision requiring OTS to assess the costs of examining savings associations and their affiliates in proportion to their assets or resources. Instead, Congress authorized the Director of OTS to assess examination costs against savings associations and their affiliates, and to recover the agency's direct and indirect expenses, as the Director deems necessary or appropriate. OTS's experience has shown that the current assessment structure can be improved to more equitably correlate assessments with OTS's costs. OTS proposes to exercise FDICIA's added flexibility to better apportion the costs of OTS regulation among savings associations. The agency has two primary goals: (1) establishing an assessment structure that keeps the assessment rates as low as possible while providing the agency the resources essential to effective supervision of a changing industry, and (2) more closely tailoring rates to the agency's increased costs in supervising certain types of institutions. In the aggregate, the proposed changes should initially result in decreased assessments for healthy institutions without significant off-balance sheet activities, that is, for traditional thrift institutions. In the future, OTS's revenue would increase or decrease as the size, activities, and condition of institutions it regulates, change.

[1] 12 U.S.C. 1463(a).

II. Description of Proposal

Under the proposed rule, OTS will determine a savings association's assessment by adding together three components that reflect the size of the institution, its condition, and the complexity of its operations. As discussed more fully below, in the agency's experience, each of these factors substantially affects OTS's costs of supervising savings associations.

A. Asset Size

Under the current OTS regulation, assessments are based on the savings association's total assets, as reported in the consolidated Thrift Financial Report. OTS's current regulation uses decreasing marginal assessment rates for increasingly larger institutions. This method was intended to reflect economies of scale realized in supervising and regulating larger institutions. However, OTS's experience has shown that the current regulation uses marginal assessment rates that are no longer consistent with OTS's economies of scale. Further, it omits certain fixed costs that are the same or nearly the same for institutions of all sizes, such as costs of drafting regulations and policies, and basic costs of conducting examinations.

OTS derived information on the magnitude of economies of scale in thrift supervision and the relationship between other thrift institution attributes and supervisory expenses from a statistical analysis of the variation in total examiner hours among thrifts. Examiner hours are the main component of supervisory expenses that vary with the size, condition, or other

attributes of thrift institutions. As such, they are a useful standard for evaluating the consistency between an assessment schedule and actual supervision costs.

An analysis of examiner hours at all OTS-supervised thrifts for 1996 and 1997 confirmed that there are substantial economies of scale in thrift examination and found that the percentage decline in the number of examiner hours per million dollars of assets is fairly steady as size increases. OTS used regression analyses to estimate the marginal increases in examiner hours for different size groups and how these marginal increases change with size. This analysis further confirmed the economies of scale in thrift examination and provided support for the rate of decline in the proposed marginal assessment rates.

The proposed regulation is designed to make OTS assessments more equitable for institutions of all sizes. First, as under the current regulation, the asset size component would impose marginal assessment rates that decline as asset size increases. Second, OTS would incorporate some of its fixed costs into the assessment rates schedule via an explicit fixed charge. The Office of the Comptroller of the Currency (OCC) has an analogous charge in its assessment schedule in the form of a very high rate on the first two million dollars of assets.

In analyzing the effects of various base assessment rates, OTS found that the proposed changes, while reflecting OTS's costs, could have a disproportionate impact on assessments for the smallest savings associations, those with less than $100 million in assets. OTS is concerned that such a change might impose undue burdens on those savings associations, which may not be in a position to readily absorb such increased costs. Therefore, OTS proposes to include an alternative size component calculation for such institutions. Under the proposal, a savings association that existed on the effective date of the regulation and never had more than $100 million in assets at the end of any quarter would be a "qualifying savings association." Such an institution would lose its status as a qualifying institution if, following the effective date of the regulation, its assets exceeded $100 million at the end of any quarter. Savings associations formed after the regulation becomes effective would not be considered qualifying savings associations. The size component for a qualifying savings association would be the lesser of the amount that would be required under the proposed regulation, or the amount that would be required under the current OTS assessment structure. Because this alternative is designed to minimize the potential burden associated with changing to a new assessment structure, OTS specifically requests comment on whether this treatment should be phased out in the future and, if so, what phase-out method or period would be appropriate.

As proposed, the asset-based assessment would use a chart to identify base assessment amounts for total assets at a certain levels, and impose marginal rates on assets above those levels. This is similar to the treatment under existing part 502. However, unlike the existing regulation, proposed part 502 would not include specific base assessment amounts or marginal rates in the regulatory text. Rather, OTS proposes to publish the specific base assessment amounts and marginal rates in Thrift Bulletins.[2]

OTS currently publishes assessment rates in a Thrift Bulletin, under authority in current § 502.6 to set rates lower than those published in current § 502.1. Since the early 1990's, thrifts have been charged assessments that are different from those included in the regulation. Having outdated rates in the regulation has caused confusion. Publishing the rates solely in Thrift Bulletins is designed to eliminate this confusion. In addition to mailing Thrift Bulletins to every thrift, OTS puts its Thrift Bulletin on its website (http://www.ots.treas.gov/) for ready public access. OTS believes that including this information in Thrift Bulletins rather than in a regulation would also allow more flexibility to match assessments with costs when OTS's supervisory costs change. As the industry changes, OTS costs of supervision and examination will continue to fluctuate. OTS solicits comments on whether this approach is appropriate.

OTS is currently considering a size component initially containing the base amounts and marginal rates listed in the following chart:

If the amount of total assets is—		The size component is—		
Over	But not over	This amount	Plus	Of excess over
$0	$67 million	$1,250	.00015424	$0
67 million	215 million	11,584	.00010288	67 million.
215 million	1 billion	26,810	.00008230	215 million.
1 billion	6.03 billion	91,416	.00006584	1 billion.
6.03 billion	18 billion	422,591	.00005267	6.03 billion.
18 billion	35 billion	1,053,051	.00004214	18 billion.
35 billion		1,769,431	.00003371	35 billion.

The actual rates contained in the Thrift Bulletin implementing a final regulation may differ from those in this chart. The chart reflects OTS's current costs and the assessment structure proposed today. Because OTS intends the proposed changes to its assessments regulation to decrease assessments, in the aggregate, for healthy institutions without significant off-balance sheet activities, and because OTS is proposing different options for assessment methods, OTS cannot yet determine with certainty the base assessment amounts and marginal rates that would be in the initial Thrift Bulletin. For example, if OTS were to decide against including a complexity component (discussed below), the agency would charge higher rates under the size component. The actual amounts and rates therefore may change depending on which options OTS selects, taking into account comments OTS receives. At the same time, OTS wants to be as informative as possible about potential base assessment amounts and marginal rates. Savings associations may find this chart useful in determining how this proposed regulation may affect them. As discussed above, OTS will not include specific rates in the final rule. The rates assessed under an implementing Thrift Bulletin will reflect the final regulation structure and OTS's anticipated costs at the time it issues the Thrift Bulletin.

OTS specifically seeks comment on how best to match assessments to OTS's costs of examining and supervising savings associations. While OTS has proposed to maintain a system of declining marginal assessment rates, it

[2] This approach is similar to the OCC's long-standing approach in its assessment regulations at 12 CFR part 8 (1998).

seeks comment on whether any other assessment method may also be appropriate. OTS also seeks comment on how best to cover fixed costs that are the same or nearly the same for institutions of all sizes. For example, should OTS incorporate fixed costs into the assessment rate schedule or use some other method to cover these costs? OTS also solicits comments on any aspects of the proposed cap for the size component for qualifying small institutions. Further, OTS seeks comments on whether asset-based assessments should be based on total assets, as under the current regulation, or whether it should be based on some other measure of assets.

B. Condition

OTS's current regulation includes a 50% premium on the asset-based assessment for institutions with a composite safety and soundness examination rating of 4 or 5 because such institutions require more supervision than higher-rated institutions. Institutions that are rated in the top three categories are not charged this condition-based premium. OTS's experience with this assessment structure since 1990 has shown that the premium rate reflects the higher costs associated with 4- or 5-rated institutions. However, OTS has also found that the current two-tiered premium structure does not fully reflect supervision costs for other institutions. Specifically, OTS used regression analyses of the variation in examiner hours across thrifts to estimate the percentage differences in examiner hours across thrifts grouped by safety and soundness examination rating. These analyses show that 3-rated associations generally require substantially more supervision than 1- and 2-rated institutions, but not as much as 4- and 5-rated institutions. Thus, under the current regulation, the higher supervisory costs for 3-rated institutions may be subsidized by thrifts with ratings other than 3 since 3-rated institutions pay no additional premium.

The proposed rule would amend OTS's current premium assessment to correlate the assessments more closely with OTS's costs. The statistical analysis of examiner hours found that the added burdens from 3-rated institutions are approximately half as great as those from 4- and 5-rated institutions. Accordingly, the proposal would impose a 25% premium on the size component of the asset-based assessment for 3-rated institutions. The proposal would continue to increase the size component of the asset-based assessment by 50% for 4- and 5-rated institutions, consistent with OTS's current practice.

OTS encourages comments on any aspects of the proposed condition component, including whether this component should be based on the examination ratings or some other factor. OTS further solicits comments on whether any condition component should be based on total assets, as under the current regulation, or whether it should be based on some other measure of assets.

C. Complexity

OTS's current asset-based assessment is based on total assets as reported on the consolidated Thrift Financial Report. Accordingly, the asset-based assessment does not reach off-balance sheet assets. OTS must, however, examine and supervise activities involving off-balance sheet assets, as well as other assets, to ensure the safety and soundness of thrift institutions. As a result, OTS incurs expenses relating to institutions with off-balance sheet assets, and these expenses can be substantial. Under the current system, these costs are not assessed directly against the institutions with off-balance sheet assets, but are shared by all savings associations. Thus, institutions with minimal or no off-balance sheet assets effectively subsidize the supervisory costs of institutions with extensive off-balance sheet assets.

OTS measured the supervisory expenses associated with certain off-balance sheet activities by extending the regression models of examiner hours discussed above to determine whether thrifts engaged in these activities absorb more examiner hours than would be expected based on asset size and examination ratings. The off-balance sheet activities included in these analyses were those that impose significant supervisory burden—trust assets administered by the thrift, loans serviced for others, and off-balance sheet assets for which the thrift holds recourse obligations or that are direct credit substitutes. These analyses found significantly greater supervisory expenses for institutions with substantial volumes of these activities.

To mitigate the inequities of assessments not matching costs of supervising complex assets, OTS proposes to amend the assessment regulation to include a new complexity component. By taking certain off-balance sheet assets into account, OTS's assessment rates can be more closely tailored to its expenses in examining institutions. The proposed complexity component would address trust assets administered by a savings association, loans serviced for others by a savings association (including both residential and non-residential loans), and off-balance sheet assets that are recourse obligations or direct credit substitutes, as described in the Thrift Financial Report.

OTS is considering whether the complexity component should also address commercial and non-residential mortgage loans. OTS analyses have found a high correlation between amounts of these types of loans and the number of examiner hours and the amount of supervisory expenses. Savings associations that concentrate on residential mortgage loans require substantially less examination and supervision than associations with less traditional loan portfolio concentrations. An asset-based assessment that treats all loans equally causes traditional mortgage lenders to subsidize OTS's extra supervisory workload for non-traditional thrifts. OTS, therefore, seeks comments on whether it should include commercial and non-residential mortgage loans in the complexity component.

As proposed, the complexity component would apply only to the extent that assets included in each category of complex assets (trust assets, loans serviced for others, and recourse obligations or direct credit substitutes) exceed a threshold of $1 billion. OTS's experience shows that the added supervisory workload for institutions with such complex assets does not become significant until the assets reach relatively high levels. Therefore, OTS proposes a minimum level of assets below which OTS would not consider complexity. OTS would compute the $1 billion threshold separately for each class of complex assets.

OTS currently expects that the assessment rate for complexity components would be 0.0015% of the amount of assets covered by each element of the complexity component over the $1 billion threshold, based on the proposed assessment provisions and OTS's costs. OTS would publish the assessment rate for the complexity component in a Thrift Bulletin, available on OTS's website, rather than in a regulation. This would allow OTS the flexibility to match assessments with fluctuating supervisory costs. Depending on the assessment structure of any final rule, the actual complexity component and the threshold may be different than the proposal.

OTS solicits comments on whether it is appropriate to consider off-balance sheet assets of any type, including the proposed types, for purposes of the assessment. OTS specifically requests

comments on how to treat off-balance sheet assets held by subsidiaries owned or controlled by the savings association. For example, where a savings association owns or controls a subsidiary that is a trust company, how should the trust assets administered by that trust company be considered under the complexity component? OTS also specifically seeks comments on whether, and if so, how best, to include commercial and non-residential mortgage loans or other on-balance sheet assets in any complexity component.

Further, OTS seeks comments on whether the complexity component should have a threshold below which complex assets should not be considered and, if so, whether the proposed $1 billion threshold is too high or too low. Additionally, OTS seeks comments on whether the threshold for any particular category should be expressed in dollar terms, as a percentage of assets (*e.g.* for commercial loans and non-residential real estate loans), or in any other terms. OTS also asks whether there should be any cap on the amount of the complexity component. Commenters who favor a cap should address how OTS should set the cap. OTS additionally seeks comments on whether the proposed assessment rate for any complexity component would be appropriate.

D. Consolidation

Under the current regulation, OTS assessments are based on the savings association's total assets, as reported in the consolidated Thrift Financial Report. OTS specifically requests comment on whether this continues to be the proper approach for subsidiaries that are other depository institutions or regulated entities. This issue affects all three proposed components of the assessment calculation. For example, if Savings Association A directly owns Savings Association B, looking at the size component by itself would usually make consolidation result in a lower assessment. However, if Savings Association A were rated "1" while Savings Association B were rated "3", the issue arises of what condition component should be assigned to the consolidated entity. For the complexity component, if Savings Association A had trust assets of $750 million and Savings Association B also had trust assets of $750 million, consolidation would result in the consolidated entity being assessed a complexity component, while neither thrift would be assessed that component if considered separately.

Therefore, OTS solicits comments on whether, when a savings association owns or controls another OTS-regulated savings association, the two should be considered one entity for assessment purposes. Would a discount be appropriate? The OCC recently amended its assessment regulation to give a discount to national banks that are in a holding company with other national banks but are not the "lead bank" in that structure.See 12 CFR 8.2(a)(6) (1998). Should the OTS consider a similar approach for savings associations that are in a savings and loan holding company structure with other OTS-regulated savings associations? What if the thrift owns or controls another depository institution, such as a state bank, that is not regulated by OTS? Similarly, where a savings association owns or controls a non-depository institution that is regulated by a non-bank regulator (*e.g.*, a state-supervised insurance company), should the assets of the subordinate organization be included in the assets of the parent savings association?

E. Other Matters

OTS seeks comment on other proposed amendments to the assessments regulation. First, the existing regulation provides for quarterly or semi-annual assessments. Under the proposed rule, all assessments would be semi-annual. OTS has found that semi-annual assessments impose less regulatory and administrative burden than quarterly assessments and therefore has imposed semi-annual assessments since January 1992.

The proposed rule would clarify the existing regulation and incorporate OTS's long-standing practice concerning requests for refunds or proration of assessments paid by institutions that cease to be savings associations. The proposed rule would explicitly state that assessments will not be prorated or refundable to institutions that cease to be savings associations. The proposal would also clarify an ambiguity in the existing regulation about the date as of which OTS determines assessments. Under the proposed rule, and consistent with current practice, an assessment would not change, either up or down, due to events that occur after the date of the Thrift Financial Report upon which the assessment is based.[3] Further, the proposed rule would clarify that the composite rating upon which an institution's condition component would be based would be the most recent composite rating of which the savings association has been notified in writing, as defined in 12 CFR part 516, before an assessment's due date.

The proposed rule also addresses several matters relating to the imposition of other fees (*e.g.*, application, examination, and investigation fees). Currently, the regulation includes a formula for calculating these fees, with the actual fees published annually in a Thrift Bulletin. The proposed rule, like the long-standing OCC regulation, would not include such a formula. Fees would continue to be announced in a Thrift Bulletin available on OTS's website.

The proposed regulation would also clarify that OTS may charge fees for extraordinary expenses relating to examining, regulating, or supervising savings associations and their affiliates. While OTS expects that any such fees would be unusual, they may be necessary or appropriate in some circumstances. Such extraordinary fees may be appropriate for recovering supervisory costs from institutions that pose extraordinary burdens, or of obtaining expert advice in areas beyond those that OTS normally encounters. Under the proposed rule, OTS would be able to adjust, add, waive, or eliminate fees in unusual circumstances.

Finally, OTS proposes to revise all of part 502 using the plain language format, consistent with the Vice President's National Performance Review Initiative and guidance in the **Federal Register** Document Drafting Handbook (April 1997 edition). This would not affect the substance of the regulation, but should help to make it easier to understand.

III. Executive Order 12866

The Director of OTS has determined that this proposed rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

IV. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act of 1980,[4] OTS has evaluated the effects this proposed rulemaking would have on small businesses, small organizations, and small governmental jurisdictions. As required, OTS has prepared the following initial regulatory flexibility analysis.

OTS proposes this rulemaking to revise its current assessments system to match assessments more closely with

[3] Consistent with OTS's current practice, an assessment could be adjusted to reflect corrections to errors contained in the applicable Thrift Financial Report.

[4] 5 U.S.C. 605(b).

OTS's costs. The Director of OTS is authorized by statute to impose assessments.[5] As described in this preamble, OTS has found that under its current assessment system OTS's costs of supervising some institutions are higher or lower than those associations pay in assessments. Therefore, OTS is attempting, through this proposed rulemaking, to more closely associate its costs with assessments.

OTS has two primary objectives for this proposed rulemaking: (1) establishing an assessment structure that keeps the assessment rates as low as possible while providing the agency the resources essential to effective supervision of a changing industry, and (2) more closely tailoring rates to the agency's increased costs in supervising certain types of institutions.

The proposed rule could affect small savings associations through the proposed condition, size, or complexity components. The proposal would have no effect on small businesses or small organizations other than small savings associations and, indirectly, small holding companies, and would not affect small governmental jurisdictions. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million.[6]

A. Impact of Proposed Condition Component.

The proposed condition component would affect small savings associations. As discussed earlier in this preamble, it would impose an assessment equal to 25% of an association's size component for each 3-rated association, regardless of its size. Currently, there are 44 savings associations that are 3-rated and that have assets under $100 million. If a small 3-rated association, for example, were to have $10 million in assets, its assessment would increase $864 annually due to the condition component (basing its size component on Thrift Bulletin 48–9, December 21, 1992). If its assets were $100 million and its rating were 3, its assessment would increase $5,462 annually due to the condition component. Other small, 3-rated savings associations would see their assessments increase depending on their size.

As discussed earlier, 3-rated savings associations require more supervisory attention than 1- or 2-rated associations. OTS therefore has three alternatives: impose extra assessments on all 3-rated associations; require institutions not rated 3 to subsidize the extra supervisory costs of 3-rated institutions; or, require some but not all 3-rated institutions to cover those costs. OTS believes it is most equitable to relate assessments to OTS's supervisory costs, and therefore proposes a condition component for 3-rated associations. Furthermore, OTS believes that requiring 3-rated institutions to pay for their extra supervisory costs would provide an incentive for those institutions to improve their condition and their ratings. OTS believes that the proposed condition component best accomplishes OTS's objective of closely tailoring assessment rates to OTS's increased costs in supervising 3-rated institutions while keeping assessment rates as low as possible.

B. Impact of Proposed Size Component.

OTS believes the proposed size component would not have a significant economic impact on a substantial number of small entities. OTS specifically designed the proposed rule to allow qualifying savings associations, generally those with assets under $100 million, to choose between calculating their size components under either the existing regulation or the proposed regulation. These institutions can therefore avoid any increases in their size component.

For an institution that increases above $100 million in assets then shrinks below $100 million, or a savings association that is formed after the rule's effective date, this choice would not be available. OTS cannot predict the number of savings associations that will exceed then shrink below $100 million in assets, and cannot predict the number of savings associations that will be formed in the future. OTS cannot predict the economic impact of the proposed regulation on such institutions because OTS's assessment rates, as proposed, will vary as OTS's supervisory costs change.

OTS has considered, as an alternative to the proposed size component with protection for small institutions, leaving its assessment system as it is. OTS believes this alternative would not meet OTS's objective of more closely tailoring assessment rates to OTS's increased supervisory costs, while minimizing significant economic impacts on small savings associations.

C. Impact of Proposed Complexity Component.

The proposed complexity component would apply only to savings associations that have more than $1 billion in certain off balance sheet assets. For Regulatory Flexibility Act purposes, a small savings association is generally defined as one having less than $100 million in assets on its balance sheet. There are currently only four savings associations that have less than $100 million in balance sheet assets that would be subject to the proposed complexity component. OTS believes that four savings associations is not a substantial number of small savings associations. For purposes of this initial regulatory flexibility analysis regarding the proposed complexity component, OTS defines small savings association as one with less than $100 million in assets including off-balance sheet assets.[7] The Regulatory Flexibility Act is designed to protect the interests of small businesses, while the proposed complexity component would only affect savings associations that own or administer assets in excess of $1 billion. OTS does not believe that institutions that own or administer assets exceeding $1 billion need any special protection from the proposed complexity component.

In any event, OTS has considered alternatives to the proposed complexity component. OTS has considered using no such component, or including different complex assets in the component, such as commercial and non-residential mortgage loans. As discussed earlier, OTS is seeking comment on all aspects of the proposed complexity component. OTS tentatively believes the component, as proposed, best accomplishes OTS's objective of tailoring assessments to better match OTS's supervisory costs, while minimizing significant economic impacts on small savings associations.

D. Other Matters

The proposed rule would streamline the existing regulation and put it in a plain language format. It would state that the Director's statutory authority to charge fees for appropriate expenses would be used only for extraordinary expenses. OTS believes these changes would have no significant impact on small savings associations. Under the proposed rule, assessments would continue to be based on Thrift Financial Reports that savings associations are otherwise required to file with OTS, and OTS would continue to collect assessments by its current procedures. Therefore, the proposed rule would impose no new or additional reporting, recordkeeping, or compliance requirements.

[5] 12 U.S.C. 1462a, 1463, 1467, 1467a.

[6] 13 CFR 121.201, Division H (1998).

[7] OTS has established this definition of small savings association for the sole purpose of this regulatory flexibility analysis, after consultation with the Small Business Administration's Office of Advocacy.

Finally, there are no federal rules that duplicate, overlap, or conflict with this proposed rule.

OTS encourages comments on all aspects of this initial regulatory flexibility analysis, including any significant economic impacts the proposed rule would have on small entities.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VI. Paperwork Reduction Act

This proposed rule contains no new information collection requirements. The information collection requirements in proposed § 502.70 are the same as those in the current assessments regulation, 12 CFR 502.3 (1998), which the Office of Management and Budget has previously received and approved in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control No. 1550–0053.

List of Subjects in 12 CFR Part 502

Assessments, Federal home loan banks, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision proposes to amend chapter V, title 12, Code of Federal Regulations by revising part 502 to read as follows:

PART 502—ASSESSMENTS AND FEES

Sec.

Authority: 12 U.S.C. 1462a, 1463, 1467, 1467a.

§ 502.5 Who must pay assessments and fees?

(a) *Authority.* Section 9 of the HOLA, 12 U.S.C. 1467, authorizes the Director to charge assessments to recover the costs of examining savings associations and their affiliates, to charge fees to recover the costs of processing applications and other filings, and to charge fees to cover OTS's direct and indirect expenses in regulating savings associations and their affiliates.

(b) *Assessments.* If you are a savings association that OTS regulates on the last day of January or on the last day of July of each year, you must pay a semi-annual assessment due on that day. Subpart A of this part describes OTS's assessment procedures and requirements.

(c) *Fees.* Whether or not you are a savings association, if you make any filings with OTS or use OTS services, the Director may require you to pay a fee to cover the costs of processing your submission or providing those services. The filings for which the Director may charge a fee include notices, applications, and securities filings. Among the services for which the Director may charge a fee are publications, seminars, certifications for official copies of agency documents, and records or services requested by other agencies. The Director also assesses fees for examining and investigating affiliates of savings associations. If you are a savings association and you or any of your affiliates cause OTS to incur extraordinary expenses related to your examination, investigation, regulation, or supervision, the Director may charge you a fee to fund those expenses. Subpart B of this part describes OTS's fee procedures and requirements.

Subpart A—Assessments

§ 502.10 How does OTS calculate my assessment?

OTS determines your semi-annual assessment by totaling three components: your size, your condition, and the complexity of your business. For the size and complexity components, OTS uses the September 30 Thrift Financial Report to determine amounts due at the January 31 assessment; and the March 31 Thrift Financial Report to determine amounts due at the July 31 assessment. For purposes of this subpart, total assets are your total assets as reported on Thrift Financial Reports filed with OTS. For the condition component, OTS uses the most recent composite rating, as defined in 12 CFR part 516 of this chapter, of which you have been notified in writing before an assessment's due date.

§ 502.15 How does OTS determine my size component?

(a) *General.* (1) Unless you are a qualifying savings association under paragraph (b) of this section, OTS uses the following chart to calculate your size component:

If your total assets are:—		Your size component is—		
Over—	But not over—	This amount—Base assessment amount	Plus—Marginal rate	Of assets over—Class floor
Column A	Column B	Column C	Column D	Column E
0	$67 million	C1	D1	0
$67 million	215 million	C2	D2	$67 million.
215 million	1 billion	C3	D3	215 million.
1 billion	6.03 billion	C4	D4	1 billion.
6.03 billion	18 billion	C5	D5	6.03 billion.

If your total assets are:—		Your size component is—		
Over—	But not over—	This amount—Base assessment amount	Plus—Marginal rate	Of assets over—Class floor
Column A	Column B	Column C	Column D	Column E
18 billion	35 billion	C6	D6	18 billion.
35 billion		C7	D7	35 billion.

(2) To calculate your size component, find the row in Columns A and B that describes your total assets. Reading across in that same row, find your base assessment amount in Column C, your marginal rate in Column D, and your class floor in Column E. Calculate how much your total assets exceed your Column E class floor. Multiply this number by your Column D marginal rate. Add this number to your Column C base assessment amount. The total is your size component. OTS will establish the base assessment amounts and the marginal rates in columns C and D in a Thrift Bulletin.

(b) *Special size component calculation for qualifying savings associations.* If you meet all of the criteria set forth in paragraph (b)(1) of this section, you are a qualifying savings association and OTS will calculate your size component in accordance with paragraph (b)(2) of this section.

(1) *Criteria for qualifying savings association status.* (i) You were a savings association as of [effective date of final rule].

(ii) Your total assets have never exceeded $100 million at the end of any quarter.

(2) *Size component for qualifying savings associations.* If you are a qualifying savings association, your size component is the lesser of:

(i) Your size component calculated under paragraph (a) of this section; or

(ii) Your assessment calculated using the general assessment table at 12 CFR 502.1(c) as contained in the 12 CFR, parts 500 to 599, edition revised as of January 1, 1998, as implemented in Thrift Bulletin 48–9, dated December 21, 1992.

§ 502.20 How does OTS determine my condition component?

OTS uses the following chart to determine your condition component:

If your composite rating is—	Then your condition component is—
1 or 2	zero.
3	25 percent of your size component.
4 or 5	50 percent of your size component.

§ 502.25 How does OTS determine my complexity component?

If your portfolio exceeds any of the thresholds set forth in paragraph (a) of this section, OTS will calculate your complexity component as set forth in paragraph (b) of this section. If your portfolio does not exceed any of the thresholds set forth in paragraph (a) of this section, your complexity component is zero.

(a) *Thresholds for complexity component.* (1) You administer trust assets valued at over $1 billion.

(2) You service loans for others and the total amount of the loans exceeds $1 billion.

(3) You have off-balance sheet assets that are recourse obligations or direct credit substitutes, as described in the Thrift Financial Report, and the total amount of these off-balance sheet assets exceeds $1 billion.

(b) *Calculation of complexity component.* OTS calculates your complexity component by separately determining the amount(s) by which you exceed each of the thresholds under paragraph (a) of this section, adding these excess amounts together, and multiplying this total by a percentage published in a Thrift Bulletin.

§ 502.30 When must I pay my assessment?

OTS will bill you semiannually for your assessments. Assessments are due January 31 and July 31 of each year. At least seven days before your assessment is due, the Director will mail you a notice that indicates the amount of your assessment, explains how OTS calculated the amount, and specifies when payment is due.

§ 502.35 How must I pay my assessment?

(a) *Debit at Federal Home Loan Banks.* If you are a member of a Federal Home Loan Bank, you must maintain a demand deposit account at your Federal Home Loan Bank with sufficient funds to pay your assessment when due. OTS will notify your Federal Home Loan Bank of the amount of your assessment. OTS will debit your account for your assessments.

(b) *Direct billing.* If you are not a member of a Federal Home Loan Bank, OTS will directly debit an account you must maintain at your association.

§ 502.40 Can I get a refund or proration of my assessment?

OTS will not refund or prorate your assessment, even if you cease to be a savings association. If you are a savings association for whom a conservator or receiver has been appointed, you must continue to pay assessments in accordance with this part. OTS will not increase or decrease your assessment based on events that occur after the date of the Thrift Financial Report upon which your assessment is based.

§ 502.45 What if I do not pay my assessment on time?

The Director will charge interest on delinquent assessments. Interest will accrue at a rate (that OTS will determine quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter. Assessments under this subpart A are delinquent if you do not pay them when required by § 502.30.

Subpart B—Fees

§ 502.50 What fees does OTS charge?

(a) The Director assesses fees for examining or investigating savings association affiliates. "Affiliate" has the meaning in 12 U.S.C. 1462(9), except that, for this part only, "affiliate" does not include any entity that is consolidated with a savings association on the Consolidated Statement of the Thrift Financial Report.

(b) The Director assesses fees for processing notices, applications, securities filings, and requests, and for providing other services.

§ 502.55 Where can I find OTS's fee schedule?

OTS will periodically publish a schedule of its fees in a Thrift Bulletin. OTS will publish these fees at least thirty days before they are effective.

§ 502.60 When will OTS adjust, add, waive, or eliminate a fee?

Under unusual circumstances, the Director may deem it necessary or appropriate to adjust, add, waive, or eliminate a fee. For example, the Director may:

(a) Reduce any fee to adjust for any inequities, efficiencies, or changed procedures that OTS projects will reduce its applications processing costs but that OTS did not consider in determining its fees;

(b) Reduce or waive any fee if OTS determines that the fee would unduly or unjustifiably discourage particular types of applications or applications for particular categories of transactions;

(c) Add a fee for a new type of application;

(d) Increase a fee for an application that presents unusual or particularly complex issues of law or policy or otherwise causes the agency to incur unusually high processing costs; or

(e) Charge a fee to recover extraordinary expenses related to examination, investigation, regulation, or supervision of savings associations or their affiliates.

§ 502.65 When is an application fee due?

(a) You must pay the application fee when you file an application. OTS will not process your application if you do not include the required fee.

(b) If OTS cannot complete its review of your application because the application is materially deficient and it refuses to accept your application for processing, you must pay a new application fee upon filing a revised application.

(c) If a transaction involves multiple applications, you must pay the appropriate fee for each application, unless OTS specifies otherwise by Thrift Bulletin.

§ 502.70 How must I pay an application fee?

You must pay an application fee to the Office of Thrift Supervision. You must include a statement of the fee and how you calculated the fee.

§ 502.75 What if I do not pay my fees on time?

(a) *Interest.* An examination or investigation fee is delinquent if OTS does not receive the fee within 30 days of the date specified in a bill. The Director will charge interest on a delinquent examination or investigation fee. Interest will accrue at a rate (that OTS will determine quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter.

(b) *Failure to pay.* If your holding company, affiliate, or subsidiary fails to pay any examination or investigation fee within 60 days of the date specified in a bill, the Director may assess that fee, with interest, against you and collect it from you. If any such entity is a holding company, affiliate, or subsidiary of more than one savings association, the Director may assess the fee against and collect it from each savings association as the Director may prescribe.

Dated: August 7, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–21866 Filed 8–13–98; 8:45 am]

BILLING CODE 6720–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–CE–49–AD]

RIN 2120–AA64

Airworthiness Directives; Rolladen Schneider Flugzeugbau GmbH Models LS 3–A, LS 4, and LS 4a Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Rolladen Schneider Flugzeugbau GmbH (Rolladen Schneider) Models LS 3–A, LS 4, and LS 4a sailplanes. The proposed AD would require repetitively inspecting the forward elevator mounting bracket on the vertical tail fin for looseness, and, if any loose bracket is found, modifying the area and installing a new forward elevator mounting bracket. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by the proposed AD are intended to detect and correct loose forward elevator mounting brackets, which could result in these brackets separating from the sailplane with consequent loss of control of the sailplane.

DATES: Comments must be received on or before September 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 95–CE–49–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Rolladen-Schneider Flugzeugbau GmbH, Muhlstrasse 10, D–63329 Egelsbach, Germany. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. J. Mike Kiesov, Project Officer, Sailplanes, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6934; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 95–CE–49–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the

Regional Counsel, Attention: Rules Docket No. 95–CE–49–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Rolladen Schneider Models LS 3–A, LS 4, and LS 4a sailplanes. The LBA reports an incident where the forward elevator mounting bracket on the vertical tailplane fin broke loose.

Separation of the forward elevator mounting bracket from the tailplane fin could result in loss of control of the sailplane.

Relevant Service Information

Rolladen Schneider has issued Technical Bulletin No. 3043/4035, dated July 14, 1993, which specifies procedures for inspecting the forward elevator mounting bracket for looseness. Rolladen Schneider EB–4 Instructions, dated July 7, 1993, include procedures for the following on sailplanes where loose forward elevator mounting brackets are found:

—modifying the area of the forward elevator mounting bracket; and

—installing a new forward elevator mounting bracket.

The LBA classified this service information as mandatory and issued German AD 93–155, dated July 21, 1993, in order to assure the continued airworthiness of these airplanes in Germany.

The FAA's Determination

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above.

The FAA has examined the findings of the LBA; reviewed all available information, including the service information referenced above; and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Rolladen Schneider Models LS 3–A, LS 4, and LS 4a sailplanes of the same type design registered in the United States, the FAA is proposing AD action. The proposed AD would require repetitively inspecting the forward elevator mounting bracket on the vertical tail fin for looseness, and, if any loose bracket is found, modifying the area and installing a new forward elevator mounting bracket. Accomplishment of the proposed inspections would be required in accordance with Rolladen Schneider Technical Bulletin No. 3043/4035, dated July 14, 1993. Accomplishment of the proposed modification and installation would be required in accordance with the Rolladen Schneider BA–4 Instructions, dated July 7, 1993, as referenced in Rolladen Schneider Technical Bulletin No. 3043/4035, dated July 14, 1993.

Cost Impact

The FAA estimates that 62 sailplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 1 workhour per sailplane to accomplish the proposed inspection, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed inspection on U.S. operators is estimated to be $3,720, or $60 per sailplane.

These figures do not take into account the cost of any modification or installation that would be required by the proposed AD if the forward elevator mounting bracket was found loose during the proposed inspection. The FAA has no way of determining how many sailplanes would have loose forward elevator mounting brackets that would require replacement.

Compliance Time of the Proposed AD

The compliance time for the proposed inspection would initially be within 30 calendar days and thereafter every 12 calendar months. The reason for the initial calendar compliance time of 30 calendar days is to assure in a reasonable time period that all of the affected sailplanes do not have loose forward elevator mounting brackets. The proposed repetitive compliance time of every 12 calendar months is being proposed to allow sailplane owners/operators the opportunity to schedule the inspections to coincide with regularly scheduled maintenance or annual inspections.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 (AD) to read as follows:

Rolladen Schneider Flugzeugbau GMBH: Docket No. 95-CE–49-AD.

Applicability: Models LS 3-A, LS 4, and LS 4a sailplanes, all serial numbers, certificated in any category.

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

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct loose forward elevator mounting brackets, which could result in these brackets separating from the sailplane with consequent loss of control of the sailplane, accomplish the following:

(a) Within the next 30 calendar days after the effective date of this AD, and thereafter at intervals not to exceed 12 calendar months, inspect the forward elevator mounting bracket for looseness. Apply a torque of 130 inches/pounds on the elevator mounting bracket and do not apply a force to the bonded in-ball. Accomplish the inspections in accordance with the Material and Instructions section of Rolladen Schneider Technical Bulletin No. 3043/4035, dated July 14, 1993.

(b) If any loose forward elevator mounting bracket is found during any inspection required by this AD, prior to further flight, modify the area and install a new forward elevator mounting bracket in accordance with the Rolladen Schneider BA–4 Instructions, dated July 7, 1993, as referenced in Rolladen Schneider Technical Bulletin No. 3043/4035, dated July 14, 1993. Continue to reinspect as specified in paragraph (a) of this AD at intervals not to exceed 12 calendar months.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the sailplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to the service information contained in this AD should be directed to Rolladen-Schneider Flugzeugbau GmbH, Muhlstrasse 10, D–63329 Egelsbach, Germany. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in German AD 93–155, dated July 21, 1993.

Issued in Kansas City, Missouri, on August 10, 1998.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–21910 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–50]

Proposed Establishment of Class E Airspace; Longville, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Longville, MN. A Nondirectional Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31 has been developed for Longville Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would create controlled airspace for Longville Municipal Airport.

DATES: Comments must be received on or before September 30, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–50, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–50." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Longville, MN, to accommodate aircraft executing the proposed NDB Rwy 31 SIAP at Longville Municipal Airport by creating controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace

designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL MN E5 Longville, MN [New]

Longville Municipal Airport, MN
(Lat. 46°59'25" N, long. 94°12'14" W)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Longville Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on July 29, 1998.

Richard K. Petersen,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 98–21858 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–53]

Proposed modification of Class E airspace; Valparaiso, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Valparaiso, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 09, and a GPS SIAP to Rwy 27, have been developed for Porter County Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to modify the existing surface area by increasing the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before October 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–53, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–53." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAS is considering an amendment to 14 CFR part 71 to modify Class E airspace at Valparaiso, IN, to accommodate aircraft executing the proposed GPS Rwy 09 SIAP, and the GPS Rwy 27 SIAP, at Porter County Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain

aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

* * * * *

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

* * * * *

AGL IN E5 Valparaiso, IN [Revised]

Valparaiso, Porter County Municipal Airport, IN
(lat. 41° 27′ 15″N., long. 87°00′22″W.)

That airspace extending upward from 700 feet above the surface within an 7.7-mile radius of the Porter County Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on August 6, 1998.

David B. Johnson,

Acting Manager, Air Traffic Division.

[FR Doc. 98–21856 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–52]

Proposed Establishment of Class E Airspace; Duluth St. Mary's Hospital Heliport, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Duluth St. Mary's Hospital Heliport, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) 190° helicopter point in space approach, and a GPS SIAP 330° helicopter point in space approach, have been developed for St. Mary's Hospital Heliport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to create controlled airspace with a radius of 6.0 miles for the point in space serving St. Mary's Hospital Heliport.

DATES: Comments must be received on or before October 6, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–52, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 98–AGL–52." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons

interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Duluth St. Mary's Hospital Heliport, MN, to accommodate aircraft executing the proposed GPS SIAP 190° helicopter point in space approach, and the GPS SIAP 330° helicopter point in space approach, for St. Mary's Hospital Heliport by creating controlled airspace. Controlled airspace extending upward form 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL MN E5 Duluth St. Mary's Hospital Heliport, MN [New]

St. Mary's Hospital Heliport, MN

Point in Space Coordinates
(Lat. 46°47'38"N., long. 92°05'52" W.)

That airspace extending upward from 700 feet above the surface within a 6.0-mile radius of the Point in Space serving St. Mary's Hospital Heliport excluding that airspace within the Duluth, MN, Class D airspace area, and the Duluth, MN, Duluth Sky Harbor, MN, and the Superior, WI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on August 6, 1998.

David B. Johnson,

Acting Manger, Air Traffic Division.

[FR Doc. 98–21855 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT–001–0005b, UT–001–0006b, UT–001–0007b, UT–001–0009b, UT–001–0012b, UT–001–0013b; FRL–6140–4]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Listing of Exempt Volatile Organic Compounds and Approval of Minor Rule Changes for Emissions From Air Strippers and Soil Venting Projects, and Repeal of Perchloroethylene Dry Cleaning Plant Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the Governor of the State of Utah on November 8, 1995, February 12, 1996, November 20, 1996, May 15, 1997, and June 10, 1998, for the purpose of establishing a revised and updated definition of a volatile organic compound (VOC) in UACR R307–1–1. The November 8, 1995, February 12, 1996, November 20, 1996, and May 15, 1997 revisions were necessary to delete volatile methyl siloxanes, parachlorobenzotrifluoride (PCBTF), acetone, perchloroethylene (PERC), HFC 43–10mee, HCFC 225ca, and HCFC 225cb as EPA had previously determined that these compounds have a negligible contribution to tropospheric ozone formation. The June 10, 1998 submittal incorporated the deletion of 16 more pollutants from the federal list that were determined to have a negligible contribution to tropospheric ozone formation; the compounds are: HFC–32, HFC–161, HFC–236fa, HFC–245ca, HFC–245ea, HFC–245eb, HFC–245fa, HFC–236ea, HFC–365mfc, HCFC–31, HCFC–123a, HCFC–151a, $C_4F_9OCH_3$, $(CF_3)_2CFCF_2OCH_3$, $C_4F_9OC_2H_5$, and $(CF_3)_2CFCF_2OC_2H_5$ (compound names only are listed here, refer to 62 FR 44901, August 25, 1997, for the chemical name and 62 FR 44903, August 25, 1997, for the complete list of exempted VOCs). In addition, this action also approves the Governor's February 12, 1996, submittal that included minor revisions to UACR R307–6–1 regarding VOC emissions from air strippers and soil venting operations. EPA is also approving the Governor's November 20, 1996, request for the removal of UACR R307–14–8 which had addressed requirements for perchloroethylene dry cleaning plants located in ozone nonattainment and maintenance areas. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before September 14, 1998.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air Program, Mailcode 8P2–A, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the Utah Department of Environmental Quality, Division of Air Quality, 150 North 1950 West, Salt Lake City, Utah 84114–4820.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations Section of this **Federal Register.**

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 30, 1998.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

[FR Doc. 98–21749 Filed 8–13–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 416 and 488

[HCFA–1885–N]

RIN 0938–AH81

Medicare Program; Update of Ratesetting Methodology, Payment Rates, Payment Policies, and the List of Covered Procedures for Ambulatory Surgical Centers Effective October 1, 1998; Extension of Comment Period

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of extension of comment period for proposed rule.

SUMMARY: This notice extends the comment period for a proposed rule published in the **Federal Register** on June 12, 1998 (63 FR 32290). In that rule we proposed to:

- Update the criteria for determining which surgical procedures can be appropriately and safely performed in an ambulatory surgical center (ASC);
- Make additions to and deletions from the current list of Medicare covered ASC procedures based on the revised criteria;
- Rebase the ASC payment rates using cost, charge, and utilization data collected by a 1994 survey of ASCs;
- Refine the ratesetting methodology that was implemented by a final notice published on February 8, 1990 in the **Federal Register**;
- Require that ASC payment, coverage, and wage index updates be implemented annually on January 1 rather than having these updates occur randomly throughout the year;
- Reduce requlatory burden; and
- Make several technical policy changes.

This proposed rule implements requirements of section 1833(i) (1) and (2) of the Social Security Act. The comment period is extended for 30 days.

DATES: The comment period is extended to 5 p.m. on September 10, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1885–P, P.O. Box 26688, Baltimore, MD 21207–5178.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1885–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Joan H. Sanow, (410) 786–5723.

SUPPLEMENTARY INFORMATION:

On June 12, 1998, we issued a proposed rule in the **Federal Register** (63 FR 32290) that would:

- Update the criteria for determining which surgical procedures can be appropriately and safely performed in an ambulatory surgical center (ASC);
- Make additions to and deletions from the current list of Medicare covered ASC procedures based on the revised criteria;
- Rebase the ASC payment rates using cost, charge, and utilization data collected by a 1994 survey of ASCs;
- Refine the ratesetting methodology that was implemented by a final notice published on February 8, 1990 in the **Federal Register**;
- Require that ASC payment, coverage, and wage index updates be implemented annually on January 1, rather than having these updates occur randomly throughout the year;
- Reduce regulatory burden; and
- Make several technical policy changes.

The proposed rule would also implement requirements of section 1833(i)(1) and (2) of the Social Security Act. We indicated that comments would be considered if we received them by August 11, 1998.

Becase of the complexity and scope of the proposed rule and because numerous members of the industry and professional associations have requested more time to analyze the potential consequences of the rule, we have decided to extend the comment period for an additional 30 days. This document announces the extension of the public comment period to September 10, 1998.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 10, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: August 10, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–21883 Filed 8–11–98; 2:42 pm]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–144, RM–9329]

Radio Broadcasting Services; Buxton, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Buxton Communications Company seeking the allotment of Channel 260A to Buxton, NC, as the community's first local aural service. Petitioner is requested to provide additional information to determine that Buxton is a community for allotment purposes. Channel 260A can be allotted to Buxton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 5–16–06 NL; 75–31–54 WL.

DATES: Comments must be filed on or before September 28, 1998, and reply comments on or before October 13, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., 8404 Lee's Ridge Road, Warrenton, VA 20186 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–144, adopted July 29, 1998, and released August 7, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–21587 Filed 8–13–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 98–145, RM–9330]

Radio Broadcasting Services; Buxton, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Buxton Radio Group seeking the allotment of Channel 268A to Buxton, NC, as the community's second local aural service. Petitioner is requested to provide additional information to determine that Buxton is a community for allotment purposes. Channel 268A can be allotted to Buxton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 5–16–06 NL; 75–31–54 WL.

DATES: Comments must be filed on or before September 28, 1998, and reply comments on or before August 7, 1998.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Richard J. Hayes, Jr., 8404 Lee's Ridge Road, Warrenton, VA 20186 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 98–145, adopted September 28, 1998, and released August 7, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98–21585 Filed 8–13–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 980804203–8203–01;I.D. 061298A]

RIN 0648–AL00

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Special Management Zones

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

ACTION: Proposed rule, request for comments.

SUMMARY: In accordance with the framework procedure of the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), NMFS proposes to establish 10 special management zones (SMZs) at the sites of artificial reefs (ARs) in the exclusive economic zone (EEZ) off South Carolina in which fishing would be restricted to handline, rod and reel, and spearfishing gear (excluding powerheads) and to prohibit

the use of powerheads in the Ft. Pierce Offshore Reef SMZ. The intended effect is to promote orderly use of the fishery resources on and around the ARs, to reduce potential user-group conflicts, and to maintain the socioeconomic benefits of the ARs to the maximum extent practicable.

DATES: Written comments must be received on or before September 14, 1998.

ADDRESSES: Comments on the proposed rule must be sent to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the framework regulatory amendment, which includes an environmental assessment, a regulatory impact review, a social impact assessment/fishery impact statement, and the report of a Monitoring Team Report should be sent to the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; Fax: 843–769–4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fisheries for snapper-grouper species off the southern Atlantic states are regulated under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Council recommended that the Regional Administrator, Southeast Region, NMFS (RA), establish 10 SMZs in the EEZ off South Carolina in which fishing would be restricted to handline, rod and reel, and spearfishing gear (excluding powerheads) and prohibit the use of powerheads in the Ft. Pierce Offshore Reef SMZ.

The 10 SMZs in the EEZ off South Carolina would be at the sites of ARs constructed by the South Carolina Department of Natural Resources (SCDNR). The ARs were constructed for the purpose of enhancing fishing opportunities of offshore sport fishermen. The SMZs would encompass the ARs plus a 500–m buffer zone around each.

ARs create recreational fishing opportunities that would not exist otherwise and may increase biological production. They are expensive to construct and their benefits can be diminished rapidly by certain types of fishing gear that are more efficient. Use of commercial fishing gear on an AR, such as sea bass pots and powerheads, may reduce significantly the recreational fishing opportunities and, thus, may eliminate the incentive for future development of ARs. In addition, use of commercial fishing gear such as bottom longlines, gillnets, or trawls, is not suitable for use on ARs because such gear tends to foul on the reef structure and with other gear. The intent of SMZs is to preserve the recreational fishing opportunities of ARs and the incentive to establish them in the future.

The ARs in the EEZ off South Carolina are on an expansive shelf area that has large areas devoid of any hard or live bottom. Prior to establishment of the ARs, these areas did not support any significant fisheries. In fact, these large barren areas limited the development of fishing.

The Ft. Pierce Offshore Reef SMZ contains an AR constructed by the Ft. Pierce Sportfishing Club (Club). The AR was constructed for the purpose of enhancing opportunities of offshore sport fishermen. Spearfishing has been allowed in the SMZ since its inception. However, the Club has found that commercial divers using highly efficient powerheads are taking a substantial share of the available amberjack and grouper in the SMZ. Such share is inconsistent with the intended use of the SMZ. Accordingly, the Club requested that the use of powerheads in the SMZ be prohibited.

In accordance with the FMP, a monitoring team appointed by the Council evaluated SCDNR's and the Club's requests in consideration of the following factors: (1) Fairness and equity; (2) promotion of conservation; (3) prevention of excessive shares; (4) consistency with the objectives of the FMP, the Magnuson-Stevens Act, and other applicable law; (5) suitability of the natural bottom in and surrounding the areas and the potential impact on historical uses; and (6) cumulative impacts. A copy of the monitoring team's report is available (see **ADDRESSES**).

After consideration of all relevant information, including the Monitoring Team Report, other supporting data, and comments received during public hearings, committee meetings, and Council meetings, the Council voted to recommend to the RA that the SCDNR's and the Club's requests be approved. Accordingly, the proposed SMZs and the management measures applicable to them and the proposed prohibition of the use of powerheads in the Ft. Pierce Offshore Reef SMZ are published for public comment.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The regulatory impact review on this action indicates that the establishment of the 10 SMZs and the prohibition on the use of a powerhead in the Ft. Pierce Offshore Reef SMZ would not have significant adverse economic effects on a substantial number of small entities fishing in and around the SMZs. The ARs were placed on flat, sandy bottoms that formerly were devoid of fish. This was done not only to increase fishing opportunities for recreational anglers, but also to avoid user conflicts with traditional commercial fisheries. Commercial fishermen can fish in a SMZ, but they are restricted to using hook-and-line gear. Most other commercial gear, such as bottom longlines, gillnets, or trawls, even if not prohibited, is not suitable for use on ARs because such gear tends to foul on the reef structure. Other commercial fishing gear, such as black sea bass pots and powerheads, would be prohibited, but it is expected that the impact would be minimal on commercial fishermen because they depend more on natural live bottom areas than ARs, and those areas are not subject to the provisions of this proposed rule. Table 5 in the regulatory amendment gives the area of SMZs relative to the total area in the EEZ off South Carolina. The total area occupied by SMZs is much less than one percent of the EEZ shelf area. Thus, the establishment of the SMZs will not substantially impact the fishing areas available to commercial fishermen. Prohibition of powerheads in the Ft. Pierce Offshore Reef would result in fishermen being unable to use this gear on the SMZ. However, they could continue to use spearheads and hook-and-line gear in the SMZ. Prior to the placement of the AR, this area did not support powerhead fishing activity, so there are no historical fishing rights for powerhead fishermen. There are alternative fishing areas in the Ft. Pierce region where the use of powerheads is allowed. Data do not exist to estimate the relative costs of fishing on these alternative areas. All such entities are considered small entities for purposes of the Regulatory Flexibility Act. These actions would not be expected to cause any significant reduction in revenue or force fishermen to significantly modify their fishing operations. No increase in production cost is expected as a result of these actions. The proposed actions would not require any existing fishing entity to acquire new equipment or to completely refit existing equipment for compliance purposes. These economic analyses do not indicate that any entity would be forced out of business. These actions are expected to enhance

fishing opportunities in the SMZs for a large number of fishermen.

As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 10, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.35, paragraphs (e)(1)(xxx) through (xxxix) are added and paragraph (e)(2)(i) and the first sentence of paragraph (e)(2)(iv) are revised to read as follows:

§ 622.35 South Atlantic EEZ seasonal and/or area closures.

* * * * *

(e) * * *

(1) * * *

(xxx) *Murrel's Inlet 60 Foot Reef* is bounded on the north by 33°17.50' N. lat.; on the south by 33°16.50' N. lat.; on the east by 78°44.67' W. long.; and on the west by 78°45.98' W. long.

(xxxi) *Georgetown 95 Foot Reef* is bounded on the north by 33°11.75' N. lat.; on the south by 33°10.75' N. lat.; on the east by 78°24.10' W. long.; and on the west by 78°25.63' W. long.

(xxxii) *New Georgetown 60 Foot Reef* is bounded on the north by 33°09.25' N. lat.; on the south by 33°07.75' N. lat.; on the east by 78°49.95' W. long.; and on the west by 78°51.45' W. long.

(xxxiii) *North Inlet 45 Foot Reef* is bounded on the north by 33°21.03' N. lat.; on the south by 33°20.03' N. lat.; on the east by 79°00.31' W. long.; and on the west by 79°01.51' W. long.

(xxxiv) *CJ Davidson Reef* is bounded on the north by 33°06.48' N. lat.; on the south by 33°05.48' N. lat.; on the east by 79°00.27' W. long.; and on the west by 79°01.39' W. long.

(xxxv) *Greenville Reef* is bounded on the north by 32°57.25' N. lat.; on the south by 32°56.25' N. lat.; on the east by 78°54.25' W. long.; and on the west by 78°55.25' W. long.

(xxxvi) *Charleston 60 Foot Reef* is bounded on the north by 32°33.60' N. lat.; on the south by 32°32.60' N. lat.; on the east by 79°39.70' W. long.; and on the west by 79°40.90' W. long.

(xxxvii) *Edisto 60 Foot Reef* is bounded on the north by 32°21.25' N. lat.; on the south by 32°20.25' N. lat.; on the east by 80°04.10' W. longitude; and on the west by 80°05.70' W. long.

(xxxviii) *Edisto 40 Foot Reef* is bounded on the north by 32°25.78' N. lat.; on the south by 32°24.78' N. lat.; on the east by 80°11.24' W. long.; and on the west by 80°12.32' W. long.

(xxxix) *Port Royal 45 Foot Reef* is bounded on the north by 32°07.65' N. lat.; on the south by 32°06.65' N. lat.; on the east by 80°28.80' W. long.; and on the west by 80°29.80' W. long.

(2) * * *

(i) In the SMZs specified in paragraphs (e)(1)(i) through (xviii) and (e)(1)(xxii) through (xxxix) of this section, the use of a gillnet or a trawl is prohibited, and fishing may be conducted only with handline, rod and reel, and spearfishing gear.

* * * * *

(iv) In the SMZs specified in paragraphs (e)(1)(i) through (x), (e)(1)(xx), and (e)(1)(xxii) through (xxxix) of this section, a powerhead may not be used to take South Atlantic snapper-grouper. * * *

* * * * *

[FR Doc. 98–21933 Filed 8–13–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 63, No. 157
Friday, August 14, 1998

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

Rural Utilities Service

Georgia Transmission Corporation, Notice of Intent

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Intent to Hold Scoping Meeting and Prepare an Environmental Assessment and/or Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) proposes to prepare an Environmental Assessment and/or an Environmental Impact Statement (EIS) for its Federal action related to a proposal by Georgia Transmission Corporation to construct approximately 35 miles of 230 kV transmission line between Moultrie and Valdosta, Georgia.

MEETING INFORMATION: RUS will conduct scoping meetings in an open house forum on Thursday, September 17, 1998, from 6 p.m. until 8 p.m. at the Colquitt Electric Membership Corporation auditorium located at 17 Rowland Drive, in Moultrie, Georgia, and on Friday, September 18, 1998, from 9 a.m. until 11:00 a.m. in the Patterson Room of the Holiday Inn in Valdosta, Georgia, which is located on Interstate 75 at State Route 133 (exit 5).

FOR INFORMATION CONTACT: Bob Quigel, Engineering and Environmental Staff, Rural Utility Service, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–0468. Bob's E-mail address is bquigel@rus.usda.gov. Information on this project will also be available on Georgia Transmission Corporation's web site. The web site address is www.gatrans.com.

SUPPLEMENTARY INFORMATION: Georgia Transmission Corporation proposes to construct the transmission line from a proposed substation to be constructed in Northeast Moultrie to a proposed substation to be constructed in Northwest Valdosta. Both substations will be constructed by Georgia Power Company. Steel or concrete H-frame structures will be used to support the conductors for the majority of the length of the project. The heights of these structures typically range from 65 to 85 feet and require a right-of-way width of 125 feet. Single pole steel or concrete structures may also be used to support the conductors. These structures would typically range in height from 80 to 100 feet and require a right-of-way width of 100 feet. The study area for the transmission line includes portions of Colquitt, Brooks, Cook, and Lowndes Counties, Georgia.

Alternatives considered by RUS and Georgia Transmission Corporation to constructing the transmission line as proposed include no action and constructing a 230 kV transmission line between Moultrie and Thomasville.

To be presented at the public scoping meeting will be a corridor and alternative study prepared by Georgia Transmission Corporation. The corridor and alternative study is available for public review at RUS at the address provided in this notice or at Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia. This document will also be available at the Cook County Library located at 213 East 2nd Street in Adel, Georgia, the South Georgia Regional Library located at 300 Woodrow Wilson Drive in Valdosta, Georgia, the Brooks County Library located at 404 Talokas Road in Quitman, Georgia, and the Moultrie/Colquitt County Library located at 204 5th Street, SE, in Moultrie, Georgia.

Government agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and Georgia Transmission Corporation will be available at the scoping meeting to discuss RUS's environmental review process, describe the project and alternatives under consideration, discuss the scope of environmental issues to be considered, answer questions, and accept oral and written comments. Written comments will be accepted for at least 30 days after the public scoping meeting. Written comments should be sent to RUS at the address provided in this notice.

From information provided in the corridor and alternative study, input that may be provided by government agencies, private organizations, and the public, Georgia Transmission Corporation will prepare an environmental analysis to be submitted to RUS for review. If significant impacts are not evident based on a review of the environmental analysis and other relevant information, RUS will prepare an environmental assessment to determine if the preparation of an EIS is warranted.

Should RUS determine that the preparation of an EIS is not warranted, it will prepare a finding of no significant impact (FONSI). The FONSI will be made available for public review and comment for 30 days. Public notification of a FONSI would be published in the **Federal Register** and in newspapers with a circulation in the project area. RUS will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements as prescribed by CEQ and RUS environmental policies and procedures.

Dated: August 11, 1998.

Glendon Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 98–21920 Filed 8–13–98; 8:45 am]

BILLING CODE 3410–15–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies

employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 14, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Tape, Measuring

5210–00–086–4988
5210–00–182–4797
5210–00–150–2920
NPA: Charleston Vocational Rehabilitation Center, Charleston Heights, South Carolina

Paint, Latex

8010–00–045–3478
8010–00–055–5100
8010–00–055–5183
8010–00–418–4667
8010–00–418–4668
8010–00–418–4669
8010–00–419–8541
8010–00–463–7063
8010–00–598–5730
8010–00–598–5733
8010–00–823–7962
8010–00–823–7964
NPA: Progress Industries, Newton, Iowa

Services

Grounds Maintenance
Naval Air Station
Key West, Florida
NPA: Goodwill Industries of South Florida, Inc., Miami, Florida
Janitorial/Custodial
Naval Surface Warfare Center, Crane Division
Building 3291
Crane, Indiana
NPA: Orange County Rehabilitative and Developmental Services, Inc., Paoli, Indiana
Janitorial/Custodial
Social Security Administration 6400 Old Branch Avenue
Clinton, Maryland
NPA: Davis Memorial Goodwill Industries, Washington, DC
Janitorial/Custodial
Social Security Administration 190 Stone Street
Watertown, New York
NPA: Jefferson County Chapter, NYSARC, Watertown, New York
Operation of Postal Service Center
Shaw Air Force Base, South Carolina
NPA: The Genesis Center, Sumter, South Carolina.

G. John Heyer,

General Counsel.

[FR Doc. 98–21921 Filed 8–13–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 14, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following service has been proposed for addition to Procurement List for production by the nonprofit agency listed:

Janitorial/Custodial
Post-Wide
Fort Bragg, North Carolina
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia.

G. John Heyer,

General Counsel.

[FR Doc. 98–21922 Filed 8–13–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Additions to the Procurement List; Correction

In the document appearing on page 40878, FR 98–20501, in the issue of July 31, 1998, in the second column, the service listed as Facilities Services Support, White Sands Missile Range, White Sands, New Mexico should read Facilities Services Support, High Energy Laser Systems Test Facility (HELSTF), White Sands Missile Range, New Mexico.

G. John Heyer,

General Counsel.

[FR Doc. 98–21923 Filed 8–13–98; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Briefing on Schools and Religion

AGENCY: Commission on Civil Rights.

ACTION: Notice of briefing.

SUMMARY: Notice is hereby given that a public briefing before the U.S. Commission on Civil Rights will commence on Friday, August 21, 1998, beginning at 9:00 a.m., in the Renaissance Madison Hotel, located at 515 Madison Street, South Room, Seattle, WA 98104. The purpose of the briefing is to collect information within the jurisdiction of the Commission, to examine the operations of the Equal Access Act and similar laws and the adherence by the public schools to these laws and the Constitution in regard to religious freedom. The Commission is an independent bipartisan, factfinding agency authorized to study, collect, and disseminate information, and to appraise the laws and policies of the Federal Government, and to study and collect information with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.

Hearing impaired persons who will attend the briefing and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division at (202) 376–8105 (TDD) (202) 376–8116, at least five (5) working days before the scheduled date of the briefing.

FOR FURTHER INFORMATION CONTACT: Barbara Brooks, Press and Communications (202) 376–8312.

Dated: August 10, 1998.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–21816 Filed 8–13–98; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Open Meeting

A meeting of the Materials Technical Advisory Committee (MTAC) will be held August 27, 1998, 10:30 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to advanced materials and related technology.

Agenda:

1. Opening remarks by the Co-Chair.
2. Discussion of Biological Weapons Convention (BWC) on-site activity; specifically, visits.
3. Discussion of BWC declaration triggers and of activities besides vaccine production that should trigger a declaration.
4. Review of proposed BWC declaration format.
5. Discussion of any other BWC-related issues.
6. Presentation of papers or comments by the public.
7. Committee assignments.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA MS: 3886C, 15th St. & Pennsylvania Ave., NW., U.S. Department of Commerce, Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: August 10, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–21891 Filed 8–13–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–813]

Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On April 9, 1998, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on canned pineapple fruit from Thailand. This review covers seven producers/exporters of the subject merchandise. The period of review is July 1, 1996, through June 30, 1997. Based on our analysis of comments received, these final results differ from the preliminary results. The final results are listed below in the section **Final Results of Review.**

EFFECTIVE DATE: August 14, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Riggle or Kris Campbell, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0650 and (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (the Department) regulations are to the regulations provided in 19 CFR part 351, as published in the **Federal Register** on May 19, 1997 (62 FR 27296).

Background

This review covers the following producers/exporters of merchandise subject to the antidumping duty order on canned pineapple fruit from Thailand: Siam Food Products Public Company Ltd. (SFP); The Thai

Pineapple Public Company, Ltd. (TIPCO); Thai Pineapple Canning Industry Corp., Ltd. (TPC); Malee Sampran Factory Public Company Ltd. (Malee); The Prachuab Fruit Canning Co. Ltd. (Prachuab); Siam Fruit Canning (1988) Co. Ltd. (SIFCO); and Vita Food Factory (1989) Ltd. (Vita). On April 9, 1998, the Department published the preliminary results of this review. See Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 63 FR 17357 (Preliminary Results). On June 8, 1998, we received case briefs from: (1) Maui Pineapple Co. Ltd. and the International Longshoremen's and Warehousemen's Union (collectively, the petitioners); (2) all respondents listed above except for Prachuab and Vita; [1] (3) U.S. importers Heartland Foods Inc., J.A. Kirsch Corp., Mandi Foods, Inc., North East Marketing Co., Port Royal Sales, Ltd., and Summit Import Corp. (collectively, Heartland *et al.*); and (4) U.S. importer UniPro Foodservice, Incorporated (UniPro). On June 15, 1998, we received rebuttal briefs from the petitioners, Malee, TIPCO, TPC, and from Heartland *et al.*

Scope of Review

The product covered by this review is canned pineapple fruit (CPF). CPF is defined as pineapple processed and/or prepared into various product forms, including rings, pieces, chunks, tidbits, and crushed pineapple, that is packed and cooked in metal cans with either pineapple juice or sugar syrup added. CPF is currently classifiable under subheadings 2008.20.0010 and 2008.20.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS 2008.20.0010 covers CPF packed in a sugar-based syrup; HTSUS 2008.20.0090 covers CPF packed without added sugar (i.e., juice-packed). Although these HTSUS subheadings are provided for convenience and for customs purposes, our written description of the scope is dispositive.

Duty Absorption

On February 12, 1998, the petitioners requested that the Department investigate the extent to which duty absorption has occurred in this review. As we stated in the Preliminary Results (63 FR at 17358), section 351.213(j)(1) of our regulations provides that we will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation. Because the petitioners' request was untimely filed, we did not investigate the occurrence of duty absorption in this review. We received no comments on this aspect of our preliminary results.

Partial Rescission of Antidumping Duty Administrative Review

On October 6, 1997, Dole Food Company Inc., Dole Packaged Foods Company and Dole Thailand Ltd. (collectively, Dole) withdrew its request for a review. Because there was no other request for a review of Dole, and because Dole's letter withdrawing its request for a review was timely filed, we are rescinding the review with respect to Dole in accordance with 19 CFR 351.213(d)(1). See Preliminary Results, 63 FR at 17357. No parties commented on this issue for the final results.

Fair Value Comparisons

We calculated export price (EP), constructed export price (CEP) and normal value based on the same methodology used in the preliminary results with the following exceptions. Where applicable, we have cited to the relevant interested party comment; otherwise, we address these changes further in the company-specific final analysis memoranda.

SFP

We deducted international freight expenses for U.S. sales on which this expense was incurred.

TPC

1. We added to normal value an amount for bank fees incurred in Thailand after converting it from Thai baht. See TPC Comment 5, below.
2. We converted TPC's reported inventory carrying costs from Thai baht before adding it to TPC's dollar-denominated indirect selling expenses to create the variable INDH2BHT. See TPC Comment 4 below.
3. We corrected an erroneous exchange rate conversion of the variable ISEL2COP.
4. For EP sales, we corrected certain programming language regarding our use of contract date as the date of sale for purposes of the margin calculation.
5. We corrected an exchange-rate conversion error on TPC's commissions on comparison market sales.
6. We corrected errors reported by TPC to information related to U.S. sales observations 130 and 145.

SIFCO

1. We adjusted the per-unit price of U.S. sales invoice SFC–524/1996 based on findings at verification.
2. We converted inventory carrying cost and commission expenses to Thai baht.

Prachuab

We corrected exchange-rate conversion errors on bank charges, indirect selling expenses, commissions and credit on Prachuab's comparison market sales and on bank charges on its U.S. sales.

Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average cost of production (COP), by product, based on the sum of each respondent's costs of materials, fabrication, general expenses and packing costs. We calculated the COP based on the same methodology used in the preliminary results with the following exceptions:

Malee

We adjusted Malee's interest expense (see Malee Comment 2, below). We adjusted general and administrative (G&A) expense to correct a double-counting error.

TIPCO

We recalculated the cost of goods sold figure used in determining TIPCO's G&A ratio. See TIPCO Comment 1, below.

SIFCO

We adjusted the following cost variables to account for corrections at verification: sugar, fresh fruit, acid, direct labor, variable overhead, fixed overhead, cans and lids, packing and tax rebates.

Prachuab

We calculated Prachuab's fruit costs based on the net realizable value (NRV) methodology.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. As noted above, we received comments and rebuttal comments from the petitioners, five of the respondents, and domestic interested parties.

General Issues

Fruit Cost Allocation

SFP and TIPCO contend that the Department improperly used a net realizable value (NRV) methodology to allocate fruit costs to calculate COP and

[1] We received comments from SIFCO on May 29, 1998, in addition to its June 8, 1998 submission. All dates referenced for documents submitted by SIFCO are the dates on which the particular document was certified as received by the Department, which differ from the dates listed on the cover page of these documents.

constructed value (CV). The respondents state, first, that the Court of Appeals for the Federal Circuit (CAFC) ruled in *IPSCO, Inc.* v. *United States*, 965 F.2d 1056 (Fed. Cir. 1992) (*IPSCO*) that value-based allocations of costs shared by co-products are not allowed under the antidumping law. Second, the respondents argue that the IPSCO ruling was applied specifically to this case by the Court of International Trade (CIT) in *Thai Pineapple Public Co., Ltd.* v. *United States*, 946 F. Supp. 11 (CIT 1996) (*TIPCO*), where the CIT ruled in an appeal of the Department's final determination in the underlying investigation that *IPSCO* applies to allocation of fruit costs.

Regarding the specific cost allocation methodology to be used in place of the NRV methodology, the respondents state that they included weight-based fruit cost allocations in their section D response that are consistent with those reported by certain mandatory respondents in the original investigation and later adopted by the Department in the remand proceedings stemming from the less-than-fair-value investigation.

The petitioners respond that the Department's use of the NRV methodology in the preliminary results was correct and should not be replaced with invalid weight-based allocations for the final results. With respect to the validity of the NRV methodology, the petitioners claim that: (1) it reasonably reflects the significantly different quality of the fruit parts used in the production of CPF versus those used in the production of juice products; and (2) *IPSCO* does not invalidate this methodology, since it involved the allocation of costs between two grades of merchandise that were physically identical, including identical inputs, except in quality and in market value. The petitioners argue that *IPSCO* did not indicate that use of a value-based allocation methodology was legally impermissible but, rather, that the courts will defer to the Department's preference for reliance on a respondent's normal allocation methodology where appropriate, particularly when there are significant differences in the raw materials.

With respect to the validity of the weight-based methodologies submitted by SFP and TIPCO, the petitioners state that these allocations: (1) do not reflect the historical fruit cost allocations used by these companies; and (2) do not reasonably reflect the costs associated with the production of canned pineapple fruit because they fail to incorporate any measure of the qualitative factor of the different parts of the pineapple. For these reasons, the petitioners claim, such methodologies do not meet the statutory requirements set forth in section 773(f)(1)(A) of the Act.

DOC Position: Consistent with past segments of this proceeding, we have continued to allocate raw fruit costs incurred by SFP and TIPCO using an NRV methodology, which reasonably reflects qualitative differences that exist between the joint raw materials used to produce CPF and juice.[2] In the less-than-fair-value investigation involving this case (Final Determination of Sales at Less Than Fair Value: Canned Pineapple Fruit from Thailand, 60 FR 29553, 29559–62 (June 5, 1995) (LTFV Final Determination)), we rejected the respondents' arguments that we should disregard fruit costs as recorded in their normal books and records in favor of fruit costs calculated based on the relative weight of the fruit contained in CPF versus juice products.[3] In the Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand, 63 FR 7392 (February 13, 1998) (1995–96 Final Results), we determined that, while certain respondents had replaced their historical fruit cost allocation methodologies with weight-based allocation methodologies, such allocations were inappropriate because they did not incorporate any measure of the qualitative factor of the different parts of the pineapple, and therefore did not reasonably reflect the costs associated with production of canned pineapple fruit. See 1995–96 Final Results, 63 FR at 7398.

For the same reasons as those provided in the above determinations, we continue to reject the use of a weight-based allocation methodology in this review. As we stated in the 1995–96 Final Results, a reasonable fruit cost allocation methodology is one that reflects the significantly different quality of the fruit parts that are used in the production of CPF versus those used in the production of juice products. An allocation methodology based on NRV data recognizes these differences.

We disagree with the respondents' arguments that the CAFC ruled in *IPSCO* that value-based cost allocations are unlawful. In that case, the Department allocated costs equally between two grades of pipe, reasoning that because they were produced simultaneously, the two grades of pipe in fact had identical production costs. While the CAFC noted, in deferring to the Department's "consistent and reasonable interpretation of section 1677b(e)," that the allocation of costs based on relative value resulted in an unreasonable circular methodology (i.e., because the value of the pipe became a factor in determining cost, which became the basis for measuring the fairness of the selling price of pipe), nowhere did the appellate court indicate that use of an allocation methodology based on relative value was legally impermissible. *IPSCO*, 965 F.2d at 1061. On the contrary, *IPSCO* suggests that the courts will defer to the Department's preference for reliance on a respondent's normal allocation methodologies, particularly when there are significant differences in the raw materials. Thus, our reasoning in the instant case (i.e., that the use of the pineapple cylinder in production of CPF and the use of the shells, cores, and ends in production of juice and concentrate, requires a value-based allocation) is fully consistent with *IPSCO*.

Company-Specific Issues

Vita

Use of Adverse Facts Available for Vita

U.S. importers Heartland *et al.* and UniPro submitted comments addressing the following alleged errors in the application of adverse facts available to Vita in the preliminary results: (1) the margin assigned to Vita fails to reflect the amended final determination in the underlying investigation (see Comment 2A, below); (2) the assignment of an adverse rate to Vita is inappropriate because the company acted to the best of its ability (Comment 2B); (3) the preliminary margin assigned to Vita is not "representative" because it does not reflect current market conditions (Comment 2C); (4) the rate applied to Vita for the purposes of the preliminary results cannot be corroborated (Comment 2D); and (5) the antidumping law should not be administered in a manner that would cause unjust and unwarranted harm to U.S. companies (Comment 2E).

Comment 2A: The Use of a Facts Available Rate from the Final Determination Instead of the Amended Final Determination—Heartland *et al.* and UniPro argue that the 55.77 percent margin assigned to Vita (based on the

[2] In addition to SFP and TIPCO, we have used an NRV methodology for all companies in this review based on sales and separable costs for 1990–94 period, with the exception of Malee. Because Malee already allocates fruit costs on a basis that reasonably takes into account qualitative differences between pineapples parts used in CPF versus juice products in its normal accounting records, we have not required Malee to recalculate its reported costs using the NRV methodology. See Preliminary Results, 63 FR at 17360–17361.

[3] As noted by SFP and TIPCO, this aspect of the LTFV Final Determination was overturned by the CIT in TIPCO and is currently on appeal before the CAFC.

rate calculated for Siam Agro Industry Pineapple & Others Public Company Ltd. (SAICO) in the underlying investigation) reflects a rate that was subsequently reduced to 51.16 percent after certain clerical errors were corrected in the amended LTFV determination in this case (Notice of Antidumping Duty Order and Amended Final Determination: Canned Pineapple Fruit From Thailand, 60 FR 36775 (July 18, 1995)). Therefore, they assert, if the Department decides to use the SAICO rate in the final results, the correct rate should be 51.16 percent from the amended final determination.

The petitioners agree with Heartland *et al.* and UniPro on this point.

DOC Position: We agree that the amended final rate is the correct rate and have used it for the purposes of these final results.

Comment 2B: Assignment of an Adverse Rate—Heartland *et al.* argue that the Department's assignment of an adverse rate to Vita is inappropriate because the company acted to the best of its ability. Instead, these companies maintain, the Department should base Vita's rate on the "all others" rate from the investigation.

Heartland *et al.* state that section 776(a) of the Act lists specific instances in which the Department must determine dumping margins on the basis of facts available. According to Heartland *et al.*, the Department is permitted, but not required, to use an inference that is adverse to the interests of a party only if that party has been deemed uncooperative due to a failure to act to the best of its ability. Heartland *et al.* assert that, in the preliminary results, the Department merely quoted the antidumping statute with regard to the use of adverse facts available, and made no factual finding that Vita was uncooperative due to a failure to act to the best of its ability. In this regard, Heartland *et al.* cite *Borden Inc., et al.* v. *United States*, Slip Op. 98–36 at 74 (CIT, March 26, 1998) for the proposition that the Department must make a specific factual finding of non-cooperation, as opposed to simply quoting section 776 of the Act. Heartland *et al.* maintain that such a finding must be made on the basis of substantial evidence on the record before the Department can resort to the use of adverse facts available.

As evidence that Vita acted to the best of its ability, Heartland *et al.* point out that Vita provided a timely response to sections A through C of the Department's questionnaire. In this respect, Heartland *et al.* contend that Vita's position in this review is analogous to that of SNFA, the foreign manufacturer in *Allied-Signal Aerospace* v. *United States*, 28 F.3d 1188 (Fed. Cir. 1994) (*Allied-Signal*), in which the CAFC found that SNFA had responded to the best of its ability even though it had been unable to provide the Department with all requested information. Upon remand SNFA was assigned a margin based on the "all-others" rate. Heartland *et al.* maintain that, like SNFA, Vita submitted a substantial amount of information, but claim that factors outside Vita's control (three questionnaires in 25 days, loss of legal counsel, currency depreciation, and the Thai economic crisis), rather than "deliberate recalcitrance," prevented it from providing a more complete response.

The petitioners respond that, while any of the instances described in section 776(a) is a sufficient basis for facts available, Vita's voluntary termination of its participation involves three of these (i.e., withholding requested information, failing to provide information within established deadlines, and significantly impeding a proceeding). Moreover, the petitioners state, the Department clearly made a fact-based finding that Vita was an uncooperative respondent, citing the chronology of events listed in the Preliminary Results (63 FR at 17358) detailing the Department efforts to notify Vita directly of its obligations, along with Vita's failure to respond. The petitioners argue that, given the fact that Vita dismissed its counsel and dropped out of the review shortly after the petitioners filed a below-cost allegation with respect to Vita, an inference can be made that Vita realized that its margin would be above its deposit rate (which was based on the "all others" rate) if it provided the requested NRV data, noting that Vita and its counsel were well aware that the magnitude of the margins in this case has been driven by the NRV data submitted by the respondents. The petitioners further argue that, in order to be deemed cooperative, the respondent must remain cooperative throughout the review, and maintain that the courts have uniformly approved the use of facts available where respondents attempt to control the process to their benefit through a submission of piecemeal information (citing *Pistachio Group of the Association of Food Industries* v. *United States*, 671 F. Supp. 31, 40 (CIT 1987)).

The petitioners state that, unlike the *Allied-Signal* case cited by Heartland *et al.*, where the respondent in that case demonstrated that it was willing to respond but was unable to do so, there is no record evidence that Vita was unable to respond. On the contrary, the petitioners argue, Vita acknowledged in a September 25, 1997, letter to the Department (at 2) that it "maintained all of the sales data" requested by the Department. As to the purported reasons for Vita's inability to respond to the questionnaire, the petitioners point out that the other respondents were also dealing with the same economic conditions and they all participated in this review, two of them doing so without counsel.

Finally, the petitioners contend that they specifically requested a review of Vita based on information that the current margin applicable to Vita was not indicative of current market conditions, and argue that Vita's failure to cooperate has affirmed that the petitioners were correct. Therefore, they submit, the Department may not reward Vita's non-participation by continuing to apply the "all others" rate as suggested by Heartland *et al.*

DOC Position: We disagree with Heartland *et al.*'s assertion that no adverse inferences should be made in selecting Vita's facts available rate. Contrary to Heartland *et al.*'s assertions, our decision to rely on an adverse rate was grounded in a fact-based finding in the preliminary results that Vita had not cooperated to the best of its ability in this review, and not on a mere recitation of the statutory provisions concerning the use of facts available.

As we explained in the preliminary results, Vita was given multiple opportunities to respond to the Department's request for information. As illustrated by the following sequence of events, we made repeated requests to obtain the information necessary for our analysis from Vita, but were ultimately unsuccessful in our efforts to gather such data. On January 8, 1998, counsel for Vita notified us that it had withdrawn its representation of and entry of appearance on behalf of Vita. On January 9, 1998, we contacted Vita to determine whether the company planned to continue as a respondent in this review. Vita notified the Department on January 12, 1998, that it planned to continue in this review. On January 20, 1998, we notified Vita that we had not received its response to our January 2, 1998, supplemental section A questionnaire. Vita notified the Department on January 22, 1998, that it had no knowledge of the supplemental section A questionnaire. Because we initially issued the supplemental section A questionnaire to counsel for Vita prior to its withdrawal as Vita's representative, we sent another copy of the questionnaire directly to Vita on January 27, 1998, and requested that

Vita respond by February 4, 1998. We also provided Vita with instructions on how to file submissions with the Department, instructions for serving such submissions to interested parties, and an interested parties list for this review. On the same date, we sent a supplemental questionnaire for sections B and C directly to Vita by certified mail. On February 5, 1998, we again informed Vita that we had not received its response to the supplemental section A questionnaire. At the same time, we reminded Vita of the February 6, 1998, deadline for its responses to questionnaire section D (which we issued directly to the company on January 13, 1998), and its February 11, 1998 response to supplemental sections B and C questionnaire. Vita did not respond, nor did it provide any explanation as to why it was unable to do so.

Unlike in *Allied-Signal,* Vita did not show a willingness to respond throughout the review, but simply ceased communicating. Section 782(c)(1) of the Act requires that an interested party promptly notify the Department if it is unable to submit information in the form and manner requested, and that it provide a "full explanation and suggested alternate forms" in which it is able to provide the information. Because Vita, in not responding to our repeated requests for information, has failed to act to the best of its ability, we have applied adverse facts available in accordance with section 776(b) of the Act.

Comment 2C : "Representativeness" of the Rate Selected—UniPro and Heartland *et al.* argue that the proposed margin is not representative of current market conditions, rendering it inappropriate. For example, UniPro states, the proposed facts available rate is more than nine times greater than the average margin for the six respondents for whom the Department calculated margins in this review. UniPro holds that the Department has previously rejected rates as unrepresentative in similar circumstances, citing Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996), where the Department rejected as facts available a margin that was "out of proportion" and where the respondent "represented only a small fraction of the industry." Likewise, UniPro claims, SAICO's margin from the underlying investigation cannot be said to be representative of the industry nor relevant to or probative of current conditions. UniPro suggests that, given that the highest margin calculated for the preliminary results was 14.19 percent, and the average of all calculated margins was 6.13 percent, it is highly unlikely that Vita would be able to compete in the U.S. market even if the Department applies the "all others" rate for the final results, much less the selected adverse facts available rate.

The petitioners respond that the fact that the facts available rate used by the Department in the preliminary results is four times higher than the highest calculated rate for the instant review is irrelevant, considering that SIFCO's preliminary calculated rate of 14.19 percent is 14 times higher than Malee's preliminary calculated rate of 1.01 percent.

DOC Position: Our presumption is that the highest calculated margin for any company in any segment of the proceeding is reflective of current conditions, and that, had Vita been able to demonstrate that its margin was lower than the highest margin calculated for any company in any segment of the proceeding, it presumably would have done so. See *Mitsuboshi Belting Ltd.* v. *United States,* CIT Court No. 93–09–00640, Slip Op. 97–28 (March 12, 1997) (*Mitsuboshi Belting*) (CIT affirmed that the use of a margin drawn from the investigation "reflects a common sense inference that the highest margin is the most probative of current margins because, if it were not so, the importer, knowing the rule, would have produced current information showing the margin to be less"). See also *Rhone Poulenc, Inc.* v *United States,* 899 F. 2d 1185 (Fed. Cir. 1990) (*Rhone Poulenc*). Unlike *Flowers from Mexico,* the facts in this case do not overcome this presumption. In *Flowers from Mexico,* the highest calculated rate (264.43 percent for Florex) was determined to be unrepresentative of the industry because Florex's accumulated interest expenses from a separate line of business skewed its cost of production figures. Conversely, there is no record of evidence to suggest that SAICO's business practices differ from the rest of the Thai pineapple industry such that it is not unable. We further note that Florex's rate was considered so unusual that it was not included in the calculation of the "all others" rate. That SAICO's rate was included in the calculation of the "all others" rate in the LTFV investigation is a further indication that the company was considered to be representative of the pineapple industry. Accordingly, we find that SAICO's rate from the investigation has probative value.

Comment 2D: Corroboration of the Rate Selected—Heartland *et al.* argue that the rate applied to Vita in the preliminary results cannot be used in the final results because the rate is not in accordance with section 776(c) of the Act, which requires the Department to corroborate secondary information used as adverse facts available. These companies point out that not only does the 55.77 percent margin assigned to Vita not reflect the publication of an amended final in the underlying investigation (as stated above), it does not reflect the Department's redetermination upon remand directed by the CIT in *TIPCO,* where in the Department reduced SAICO's rate to 26.92 percent. While Heartland *et al.* acknowledge that the Department has appealed *TIPCO,* they maintain that the CIT's decision in this case invalidates, or at least casts significant doubt upon the appropriateness of, the higher rate as a basis for adverse facts available. In support of their argument, Heartland *et al.* claim that, in *D&L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (*D&L Supply Co.*), the court found that the Department could not use a rate that has been vacated as erroneous as the basis for best information available (facts available). Finally, Heartland *et al.* contend that the 55.77 percent rate is not corroborated because there is no evidence suggesting that Vita is now selling CPF in the United States at dumping margins twice as high as previously estimated, referencing the company's historical rate of 24.64, the "all others" rate.

The petitioners respond that, as the Department stated in the *Preliminary Results* (63 FR at 17358), "if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period." Therefore, the petitioners argue, the Department need not further corroborate such margins. The petitioners add that *D&L Supply Co.* does not apply in this instance because, unlike the "invalidated" rate in that case, the *TIPCO* ruling is on appeal and is not yet final.

DOC Position: We agree with the petitioners that margins from other segments of the proceeding are by definition reliable sources. *See, e.g., Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty Administrative Review,* 63 FR 12752, 12753 (March 16, 1998). Because the Department has filed an appeal and the CAFC has not yet ruled on the case, the CIT decision in *TIPCO* is not final and conclusive. Therefore, we may continue to assign a rate based on the NRV

methodology where appropriate, until such time as there is a final court decision not in harmony with the Department's position on this issue. For this reason, Heartland *et al.*'s reliance on *D&L Supply Co.* is premature. Absent evidence to the contrary, we consider SAICO's rate from the underlying investigation to be reliable and, as discussed in Comment 2C, above, to have probative value.

Comment 2E: Effect of Adverse Facts Available on Importers—Heartland et al. maintain that they imported from Vita with the knowledge that they would be liable for a cash deposit requirement of 24.64 percent and that they could not foresee or prevent the circumstances that led to Vita being assigned a margin based on adverse facts available. Therefore, they argue that they should not be made victims of events beyond their control.

UniPro adds that the facts available rate assigned to Vita would unduly punish importers, such as itself, who purchased from Vita, without encouraging compliance with the Department's information requests. UniPro points out that the petitioners did not request a review of UniPro nor did the Department request any information from UniPro during the review. Moreover, Unipro states, unlike the facts in *Rhone Poulenc,* in which the CIT discusses obligations of U.S. importers in the context of an affiliated importer,[4] it does not control the information needed by the Department, nor does it maintain an ongoing commercial relationship with Vita, such that it would have been able to provide it or to pressure Vita into providing it.

The petitioners respond that neither the statute nor the Department's regulations require the Department to consider injury or harm to U.S. importers of merchandise that has been found to be sold at less than fair value. Instead, the petitioners contend, the Department's responsibility is to measure the degree of dumping by the Thai exporters on a continuing basis, so as to alleviate and to offset the injury to the domestic industry. The petitioners argue further that the importers knew that the deposit rate could rise and that they knowingly assumed this liability when they chose to purchase canned pineapple fruit from Thailand rather than from the domestic industry. The petitioners claim that Heartland *et al.* and UniPro cannot now claim they are being injured as a result of their unilateral decision to purchase from the Thai exporters, simply because the Department is following its statutory authority to enforce U.S. trade laws.

DOC Position: Section 737(b)(1) of the Act mandates that any antidumping duties in excess of the amount deposited be collected when the deposit is lower than the duty determined. Therefore, importers are on notice that the cash deposit rate is not a duty assessment rate but, rather, an estimate dependent upon the continued cooperation of the exporter. There is no guarantee that the final assessment rate will not be higher than the cash deposit rate. On this point, the CIT has held that the expectations of the U.S. importer are irrelevant in setting a dumping margin. "When a U.S. importer deals with a foreign company that is subject to an antidumping duty order, the importer must realize that the dumping margin could change to its benefit or detriment." *Union Camp Corporation* v. *United States,* CIT Court No. 97–03–00483, Slip Op. 98–38 at 22 (March 27, 1998).

TPC

Comment 1: Date of Sale

TPC argues that the Department erroneously based date of sale for TPC's EP sales on contract date, rather than invoice date, in the preliminary results. TPC presents three primary arguments as to why the Department should use invoice date as the date of sale, as follows.

1. TPC asserts that use of contract date as the date of sale for TPC's EP sales is inconsistent with the Department's regulations (19 CFR 351.401(i)), which TPC interprets as providing that invoice date is to be used not only where there are material changes between the date of contract and the date of invoice, but also where the potential for such change is present. While acknowledging that the date of sale regulation allows for a date other than invoice date where such date better reflects the date on which the material terms of sale are established, TPC contends that the cautionary language regarding this exception in the preamble to the Department's final regulations (Preamble) (*e.g.*, "a preliminary agreement on terms, even if reduced to writing, in an industry where renegotiation is common does not provide any reliable indication that the terms are truly 'established' in the minds of the buyer and seller" [5]) renders the exception inappropriate under the facts of this case. According to TPC, the canned pineapple business is the type of industry where "the existence of an enforceable sales agreement between the buyer and the seller does not alter the fact that, as a practical matter, customers frequently change their minds and sellers are responsive to those changes" (citing the Preamble, 62 FR at 27348–49). Along these lines, TPC also notes that the non-invoice date of sale example provided in the Preamble concerns the sale of large, custom-made merchandise in which the parties engage in formal negotiation and contracting procedures.

As a further indication that, for the Thai pineapple industry in general, terms of sales contracts remain negotiable, TPC notes that in the instant review the Department has relied on invoice date as the date of sale for SFP, Malee and TIPCO in connection with

[4] In *Rhone-Poulenc,* 889 F.2d at 1190, the Court stated that the Department "fairly places the burden of production on the importer, which has in its possession the information capable of rebutting the agency's inference."

[5] Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27349 (May 19, 1997).

those respondents' EP sales. TPC maintains that there is nothing about its contracts that make them any more enforceable or any less renegotiable than similar contracts entered into by the other respondents. Further, TPC argues, given that the structure of its direct sales to the comparison market is very similar to the structure of its EP sales, and considering that the Department based date of sale on comparison market sales on invoice date (based on evidence of actual changes to the material terms of sale in that market), the potential for change similarly existed on TPC's EP sales contracts.

2. TPC argues that the Department's use of the contract date as the date of sale is inconsistent with its current practice. According to TPC, the Department recently clarified in Certain Cold-Rolled and Corrosion Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170 (March 18, 1998) (Flat Products From Korea) that the key to its date of sale analysis is whether the material terms of sale can change up until the invoice date, not whether any changes have actually occurred. TPC claims that there is no record evidence in the instant review to indicate that the terms could not be changed after the contract date—only that for TPC's EP sales during the POR the terms did not change. In fact, TPC argues, in Flat Products From Korea, the Department did not discuss, nor does it appear that the respondent was required to demonstrate, the number of changes that occurred between contract date and invoice date for U.S. sales.

3. TPC suggests that use of invoice date as date of sale would ensure fair price comparisons, promote consistency from one review to the next, and would enable TPC to accurately predict which normal value will ultimately be selected for comparison to individual U.S. sales. Along these lines, TPC claims that use of invoice date as the date of sale for its EP sales would be consistent with the date of sale for its CEP and comparison market sales, noting the Department's stated preference for comparing sales with dates of sale that are established on the same basis as stated in Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Germany: Preliminary Results of Antidumping Duty Administrative Review, 62 FR 47446 (September 9, 1997) (Seamless Pipe). Moreover, TPC claims, determining the date of sale based on an empirical examination of the actual number of changes that took place between the contract date and the invoice date during a particular POR—and possibly changing the basis for the date of sale from review to review—defeats two of the objectives of the new date of sale regulation: predictability of outcome and efficient use of the Department's resources. Otherwise, TPC claims, it will never be sure which date will ultimately be used by the Department in each new review unless and until a threshold number of changes occurs.

The petitioners respond that the Department correctly based TPC's EP date of sale on the contract date, consistent with the first administrative review, since there were no changes made to the material terms after this date for such sales. The petitioners state that when the Department adopted its date of sale policy, where invoice date is identified as the "normal" date of sale, it did so with the understanding that under certain circumstances it may be appropriate to use some other date, as explained in, e.g., Memorandum for Acting Deputy Assistant Secretary from Team: Date of Sale in Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review, December 7, 1997.

The petitioners contend that TPC's cite to Flat Products From Korea in an attempt to demonstrate that the key to the Department's date of sale analysis is whether the material terms of sale can change up until the invoice date is inaccurate. Whereas TPC states that there is no record evidence in the instant review to indicate that the terms could not be changed after the contract date, the petitioners state that the only record evidence available indicates that no changes occurred to the material terms of sale after the contract date. According to the petitioners, this is a compelling reason to use a date other that invoice date, and is fully consistent with Flat Products From Korea, where the Department said that its current practice "is to use the date of invoice as the date of sale unless there is a compelling reason to do otherwise." See Flat Products From Korea, 63 FR at 13194.

With respect to TPC's argument that, in Seamless Pipe, the Department found that the U.S. date of sale should be invoice date because use of the order confirmation date would mean comparing sales for which prices were not established in the same manner, the petitioners argue that the same rationale is precisely why the Department's use of contract date is correct in the instant review: this date represents the date when prices were established for all U.S. EP sales.

The petitioners also address TPC's claims that if the Department focuses on whether a certain number of changes has actually occurred, instead of on whether such changes could occur, TPC would never be sure which sales it should look to in the comparison market to ascertain normal value. Instead, the petitioners claim, there is no guesswork involved because TPC established the terms of sale for all U.S. EP sales on the contract date, made no changes to price or quantity after that date, and knew from the prior administrative review that the Department considered these sales to have been established on the contract date.

Finally, the petitioners state, given the severe and drastic devaluation of the

Thai currency, use of the invoice date in the current and in future reviews of this order would artificially distort the actual extent of dumping because an exchange rate that is significantly lower than it was when the U.S. price was contractually set would be used in the conversion of normal value. Because TPC negotiated and established a U.S. price on the date of the contract, the petitioners argue, the Department's date of sale methodology should not be changed for the final results.

DOC Position: As in the prior review, we have continued to base TPC's EP sales on contract date. The record evidence in this segment of the proceeding indicates that the material terms of sale were established in the contracts that TPC entered into for such sales, and that such terms never varied after the contract date.

In determining in the 1995–96 review to base EP sales on contract date, we considered, and rejected, TPC's arguments that the Department's regulations and preamble require a different result:

> The general presumption in favor of invoice date continues to be our normal practice. As explained in the preamble to the Department's final regulations, "in the Department's experience, price and quantity are often subject to continued negotiation between the buyer and seller until a sale is invoiced." *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27348 (May 19, 1997)("Final Regulations") at 27348. However, this presumption applies "absent satisfactory evidence that the terms of sale were finally established on a different date." *Id.* at 27349. This caveat reflects an awareness that, "[i]n some cases, it may be inappropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that, for a particular respondent, the material terms of sale *usually* are established on some date other than the date of invoice." *Id.* (emphasis added). Accordingly, "[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department *will* use that alternative date as the date of sale." Id. (emphasis added). For these reasons, while section 351.401(i) maintains the general presumption in favor of invoice date, it provides for the use of a different date of sale where the alternative date "better reflects the date on which the exporter or producer establishes the material terms of sale."

Thus, while section 351.401(i) of our regulations maintains the general preference in favor of the use of invoice date as the date of sale, it does not, as TPC suggests, require such use wherever there is any possibility for changes to the material terms of sale up to that date. If the invoice date does not reasonably approximate the date on which the material terms of sale were established, its use as the date of sale in an antidumping analysis is inappropriate. The evidence on the record indicates that there were in fact no changes to the contracted terms of TPC's EP sales during the POR. Accordingly, consistent with our current practice (see, e.g., Stainless Steel Bar from India: Preliminary Results of New Shipper Antidumping Duty Administrative Review, 63 FR at 3536, 3537 (January 23, 1998)) [6] as well as with the prior review of TPC's sales (1995–96 Final Results, 63 FR at 7394), we determined that contract date is the appropriate date of sale for TPC's EP sales.

We disagree with TPC's contention that the uniform use of invoice date as date of sale would ensure fair price comparisons. On the contrary, the only dates that are substantively equivalent for purposes of measuring price discrimination are the contract date for EP sales and the invoice date for comparison market sales; although different in name, these are the respective dates at which the material terms of sale were established.

Our reasons for not simply basing date of sale on invoice date across all markets, where such date does not reflect the material terms of sale, were addressed in a recent determination involving Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 63 FR 32833, 32836 (June 16, 1998), as follows:

> If we were to use invoice date as the date of sale for both markets, we would effectively be comparing home market sales in any given month to U.S. sales whose material terms were set months earlier—an inappropriate comparison for purposes of measuring price discrimination in a market with less than very inelastic demand. Notwithstanding the respondent's comment that the terms of sale are subject to change and that, therefore, the final terms are not known until the date of invoice, we find that, in this case, there is no information on the record indicating that the material terms of sale change frequently enough on U.S. sales so as to give both buyers and sellers any expectation that the final terms will differ from those agreed to in the contract.

In that case, as in the 1995–96 Final Results, the Department relied on contract date as the date of sale for U.S. sales other than CEP sales out of inventory based on the reasons set forth above.

We also disagree with TPC that it has been unfairly penalized because it is not able to predict, from review to review, which date of sale the Department will choose. In fact, TPC has been well aware of our practice in this regard for each of the two reviews of this case, and our stated preference for contract date where virtually no post-contractual changes are made has remained in place during both reviews. TPC acknowledged early on in the first review that the Department might find contract date to be the appropriate date of sale where the material terms of sale where established at the contract date for virtually all sales in a given market. See 1995–96 Final Results, 63 FR at 7394–7395. In that review, we relied on contract date for EP and comparison market sales, where changes were made to the contracted terms for only one EP sale and five comparison market sales (out of several hundred sales made in each market). *Id.* In this review, TPC provided evidence of routine post-contractual changes in the material terms of sale for third-country sales; accordingly, we agreed with the company that invoice date was appropriate for this market. [7] In contrast, the company indicated that no EP sales had post-contractual changes during the POR. Given the complete absence of POR changes, and our use of contract date for EP sales in the first review where the same company had only one post-contractual change on such sales, the use of contract date for EP sales in this review is consistent and predictable. Finally, given the precedent established in this case, we are not persuaded by TPC's claim that it was unable to predict the correct date of sale due to purported inconsistencies in the Department's treatment of date of sale issues in other cases.

Comment 2: Interest Calculation

The petitioners argue that the Department should exclude foreign exchange gains from TPC's net interest calculation because it is unclear and unsubstantiated from TPC's response that these gains are related to TPC's production rather than to sales functions. According to the petitioners, it is the Department's practice to include foreign exchange gains and losses on financial assets and liabilities in its calculations of COP and CV only where those gains and losses are related to the company's production. This standard, the petitioners assert, was not met with respect to the gains at issue because TPC did not substantiate its claim that, after excluding certain

[6] Our decision to use the purchase order date as the appropriate date of sale in that case was explained in the preliminary results. However, no change in this decision was made for the final results.

[7] The frequency and the reasons for changes in contractual terms are discussed in the business proprietary version of TPC's October 22, 1997 questionnaire response (at 28) and in its January 20, 1998 supplemental questionnaire response (at 4).

exchange gains and losses associated with interest arbitrage and investment activities, the remaining exchange gains are attributable to operations, as opposed to sales.[8] In fact, the petitioners state, such gains may be attributable to accounts receivable. In this respect, the petitioners note that the Department disallowed certain gains related to accounts receivable made by another respondent in the first review of this case, citing 1995–96 Final Results, 63 FR at 7401.

TPC responds that the Department should not exclude foreign exchange gains and losses from its net interest calculation, labeling as speculation the petitioners' argument that these foreign exchange gains might include gains on export sales. Rather than point to record evidence, TPC argues, the petitioners relied instead on the observation that, for other companies, the Department has on occasion adjusted interest expense to disallow foreign exchange gains on receivables. TPC notes that the petitioners did not ask that the Department request additional information from TPC regarding exchange gains and losses after the company submitted its response to section D of the Department's questionnaire. Finally, TPC states that its calculation of foreign exchange gains and losses in this review closely tracks the methodology that was verified and accepted in the prior review.

DOC Position: We disagree with the petitioners' assertion that TPC's reported exchange rate gains should be disallowed. Our practice is to include foreign exchange gains as an offset to finance expenses if they are related to the cost of acquiring debt for purposes of financing production operations, and to exclude this item if it relates to sales. See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey (Rebar from Turkey), 62 FR 9737, 9741 (March 4, 1997). More specifically, we include in COP and CV the amortized portion of net foreign exchange gains and losses resulting from foreign-currency denominated loans as a part of the financial expenses because they reflect the actual amount of local currency that will have to be paid to retire the foreign-currency denominated loan balances. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile, 63 FR 31411, 31430 (June 9, 1998) (Salmon from Chile). On the other hand, we do not consider exchange gains and losses from sales transactions to be related to the manufacturing activities of the company and we do not include them in the financial expense calculation. See id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad and Tobago, 63 FR 9177, 9181 (February 24, 1998). In its financial expenses rate calculation, TPC identified exchange gains attributable to debt and exchange gains attributable to combined other operations (i.e., sales and purchase transactions combined). Accordingly, we were able to determine that TPC properly excluded from its calculation exchange gains attributable to "other operations."

While we are not disallowing this offset based on the arguments set forth by the petitioners, we adjusted it to reflect our practice regarding the amortization of such gains. In its submitted financial expense calculation, TPC included the total net exchange gains and did not amortize its net exchange gains related to loans. For purposes of our analysis, it is appropriate to amortize the foreign exchange gains or losses over the life of the associated debt, as the gain or loss is realized only as the loans are paid. See, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey, 63 FR 35190, 35199 (June 29, 1998) (Pipe and Tube From Turkey). Therefore, for these final results, we amortized the net foreign exchange gains related to loans reported in TPC's financial statements over the average remaining life of the loans on a straight-line basis. We included the amortized portion of the net exchange gains in the recalculation of financial expenses. This adjustment did not change the net interest expense reported by TPC. Due to the proprietary nature of this issue, it is discussed in more detail in the Memorandum from Case Analyst to Office Director: Final Results Analysis Memorandum for The Thai Pineapple Canning Industry Corp., Ltd. (TPC) (August 7, 1998) (TPC Final Results Analysis Memorandum).

Finally, we note that we confirmed through our review of TPC's financial statements in connection with this issue that TPC does not have any assets that would generate long-term interest income. It is the Department's practice to allow a respondent to offset financial expenses with short-term interest income earned from the general operations of the company. See, e.g., Pipe and Tube From Turkey, 63 FR at 35199. The Department does not offset interest expense with interest income earned on long-term investments because long-term investments do not relate to current operations. *Id.*

Comment 3: G&A Expense Calculation

The petitioners claim that TPC's reported G&A expenses are understated for two reasons. First, they are allegedly inconsistent with TPC's 1996 financial statements. Due to the proprietary nature of this comment, it is discussed in more detail in the TPC Final Results Analysis Memorandum.

Second, the petitioners claim that TPC failed to include G&A expenses incurred by Princes, an affiliated party located in the Netherlands that resells the foreign like product in the comparison market (Germany). In this regard, the petitioners note that the Department's section D questionnaire (at 53) instructed TPC to "include in your reported G&A expenses an amount for administrative services performed on your company's behalf by its parent company or other affiliated party." The petitioners claim that, because Princes is involved in the sale of the foreign like product in TPC's third-country market, Princes' G&A expenses should be included.

TPC disagrees with the petitioners' contention that the Department's questionnaire instructed TPC to include Princes' expenses in the G&A calculation. Instead, TPC states, the Department's instruction is intended to cover a situation where the normal administrative functions of an exporter/producer (e.g., the financial department or senior management functions) are provided by an affiliated party, such as a parent corporation. TPC suggests that this is to alleviate any concern that such services are provided without charge or at below market rates, and is not intended to cover situations in which affiliated resellers are performing a sales function in other markets. In this regard, TPC states that, because Princes acts as a sales office, its expenses are selling expenses, which are reported in the sections B and C sales responses, whereas TPC's G&A expenses are reported in the section D cost response. Furthermore, TPC argues, because selling expenses incurred by Princes are already deducted from the gross price of comparison market sales in determining the net price used for the cost test, including Princes' expenses in TPC's G&A would constitute double-counting of such expenses.

DOC Position: Due to the proprietary nature of the petitioners' assertion that TPC's reported G&A expenses are inconsistent with its 1996 financial statements, we address the claim further

[8] The petitioners note that TPC, in its October 22, 1997 section D questionnaire response (at 45), claims merely that these exchange gains are "attributed to operations."

in the TPC Final Results Analysis Memorandum.

Regarding expenses incurred by Princes, we disagree with the petitioners' claim that TPC inappropriately excluded such expenses from its G&A calculation. Where an affiliate's costs pertain to reselling the merchandise to unaffiliated customers, it is our practice to treat such expenses as selling expenses. See, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Duty Administrative Review, 62 FR 61276, 61287 (November 17, 1997).[9] All of the expenses incurred by Princes were related to sales activities on behalf of TPC's comparison market sales. Princes operates a single sales office in the Netherlands, through which it sells canned and packaged foods, canned fruits, fish, meats, vegetables and pastas and sauces throughout Europe and to Japan. See TPC's October 22, 1997 questionnaire response at 12. The evidence on the record of this review indicates that TPC correctly included Princes' expenses in its indirect selling expense calculation. See Exhibit B–8 of TPC's October 22, 1997, questionnaire response. For these reasons, consistent with the prior review of this case, we have treated these expenses as selling expenses.[10]

Comment 4: Comparison Market Indirect Selling Expenses

TPC claims that the Department incorrectly excluded domestic (Thai) inventory carrying costs (DINVCART) in calculating comparison market indirect selling expenses.

The petitioners respond that the Department properly excluded this expense in the calculation of third-country selling expenses, just as it properly excluded Thai inventory carrying costs from the calculation of U.S. indirect selling expenses. The petitioners assert that this expense is not related either to economic activities in the third-country or U.S. markets, and therefore should be treated the same in the normal value and CEP calculations.

DOC Position: We agree with TPC that we mistakenly omitted inventory carrying costs incurred in Thailand when calculating comparison market indirect selling expenses. The petitioners' reference to restricting indirect selling expenses to "economic activities occurring in the United States or in the third country market" is overly broad, since we do not apply this standard to third-country indirect selling expenses, only to CEP selling expenses. In calculating the CEP, we deduct from the starting price expenses (and profit) associated with economic activities occurring in the United States that relate to the sale to the unaffiliated purchaser. See TPC Comment 5, below. We do not place a corresponding limitation on comparison market selling expenses, but instead cap such expenses (to the extent that we adjust for them, as a CEP offset), by the amount of indirect selling expenses deducted in calculating the CEP. See 19 CFR 351.412(f)(2).

Comment 5: U.S. Direct Selling Expenses Incurred in Thailand

TPC claims that, for CEP comparisons, the Department erroneously both: (1) added U.S. direct selling expenses incurred in Thailand (DDIRSELU) to normal value, and (2) subtracted them from the gross U.S. price.

While the petitioners agree with this assertion, they claim that the Department failed to add U.S. warranty expenses to normal value for EP comparisons.

DOC Position: Regarding our treatment of U.S. direct selling expenses incurred in Thailand, we have added such expenses to normal value for both CEP and EP comparisons. In calculating CEP, we deduct from the starting price expenses (and profit) associated with economic activities occurring in the United States[11] that relate to the sale to the unaffiliated purchaser. See 19 CFR 351.402(b). We do not adjust for any expense that is related solely to the sale to an affiliated importer in the United States. However, we may make a COS adjustment to normal value for such expenses. *Id.*

The expenses reported under variable DDIRSELU are related to bank fees incurred by TPC in Thailand. Exhibit 7C of TPC's October 22, 1997 questionnaire response clearly shows that these expenses were incurred on sales to MIC, TPC's U.S. affiliate. As explained above, such expenses may not be deducted from the starting price in calculating the CEP. Therefore, while we intended to add this expense to normal value as a COS adjustment, we have corrected the erroneous deduction from the starting price in the United States

We also agree with the petitioners' claim that any warranty expenses incurred by TPC with respect to its EP sales should be added to normal value as a COS adjustment.

Comment 6: Commission Offset

The petitioners claim that the Department failed to make a commission offset for CEP comparisons involving home market commissions but no U.S. commissions. According to the petitioners, such an offset should be made as an upward adjustment to normal value, using the lesser of home market commissions or indirect selling expenses incurred in Thailand on U.S. sales. The petitioners note that, while U.S.-incurred indirect selling expenses were deducted from the starting price in calculating the CEP, Thai-incurred indirect selling expenses were not.

TPC responds that the Department's preliminary margin program is in this respect fully in accordance with the Department's current practice, and claims that the petitioners' proposal would incorrectly adjust for indirect selling expenses incurred in Thailand on sales made to TPC's affiliate in the United States, which is contrary to section 772(d) of the Act and with Department practice. In this regard, TPC cites Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review, 63 FR 30185, 30191 (June 3, 1998) in support of the proposition that the Department "does not deduct indirect selling expenses incurred in selling to the affiliated U.S. importer under section 772(d) of the Act."

DOC Position: We agree with the petitioners that a commission offset, based on the lesser of home market commissions or those indirect selling expenses incurred on U.S. sales that are not associated with economic activities in the United States, is appropriate for CEP comparisons involving commissions in the home market but not in the U.S. market. Contrary to TPC's claim, this would not involve the deduction from the U.S. starting price of indirect expenses not associated with economic activities in the United States. We have not deducted such expenses in arriving at the constructed export price, in accordance with section 772(d) of the Act and the SAA. However, having constructed an export price, it is appropriate to add such expenses to normal value as a commission offset for

[9] We determined that labor expenses incurred by a respondent's U.S. affiliate were related to selling the merchandise to the first unaffiliated customer in the United States and were not related to production. Therefore, we deducted such expenses from the starting price on CEP sales rather than including the expenses in the COP.

[10] See Memorandum to Director, Office of Accounting From Senior Accountant: Cost of Production and Constructed Value Memorandum for Preliminary Results: Antidumping Duty Administrative Review, Canned Pineapple Fruit from Thailand, Thai Pineapple Canning Industry Corp. Ltd. (July 31, 1997). We calculated TPC's G&A using only TPC's administrative expenses.

[11] See the SAA at 823 discussing section 772(d)(1) of the Act.

comparisons involving home market commissions but no U.S. commissions, just as we would do so generally in an export price analysis. This in accordance with the Department's regulations, which preclude a downward adjustment to the U.S. starting price for such expenses in determining the CEP, but allow for a COS adjustment to normal value for such expenses, pursuant to section 773(a)(6)(C)(iii) of the Act. See 19 CFR 351.402(b); see also 19 CFR 351.410(e) ("The Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under considerations [sic], and no commission is paid in the other market under consideration.").

TIPCO

Comment 1:

The petitioners argue that the Department should recalculate TIPCO's G&A and interest expense ratios in accordance with the Department's normal practice.

First, the petitioners claim that TIPCO has understated its actual G&A ratio because record evidence indicates that TIPCO calculated the ratio using an unconsolidated G&A expense amount as the numerator and what appears to be a consolidated cost of goods sold (COGS) amount as the denominator. The petitioners state that the Department should recalculate TIPCO's G&A ratio using the 1996 unconsolidated COGS amount from Exhibit 20 of TIPCO's October 20, 1997, questionnaire response.

In addition, the petitioners argue that TIPCO failed to submit its 1996 consolidated financial statements in accordance with the Department's instructions and, as a result, the Department cannot corroborate the reported 1996 consolidated interest expenses or the 1996 consolidated cost of goods sold figures, which were used to calculate the reported interest expense ratio. Therefore, the petitioners suggest that the Department use, as facts available, TIPCO's 1995 consolidated financial statements to recalculate TIPCO's interest expense ratio.

Finally, the petitioners argue that TIPCO improperly deducted an amount for foreign exchange gains from its 1996 interest expenses to arrive at its net interest expense ratio. According to the petitioners, deducting the exchange gain from the interest expense amount does not reflect the Department's policy since there is no evidence on the record to demonstrate that these exchange gains were related to TIPCO's production. The petitioners claim that in the prior review the Department excluded exchange gains from the net interest expense calculation when TIPCO failed to provide support for its claim that exchange gains were related to financing activities (citing 1995–96 Final Results, 63 FR at 7401).

TIPCO did not comment on the calculation of its G&A expense. Regarding the interest expense, TIPCO responds, first, that the petitioners' assertion that the Department cannot corroborate the interest expenses and COGS information appearing in TIPCO's 1996 consolidated financial statements is incorrect, claiming that the information needed for corroboration is already on the record for this proceeding because the complete 1996 consolidated financial statements were submitted to the Department during the verification of the prior review. TIPCO adds that the information it submitted during the first review is part of the record for this review, noting that section 357.104(a) of the Department's regulations provides that the Department maintains "an official record of each antidumping and countervailing duty proceeding" and that a "proceeding" as defined by the Department's regulations includes the time period covering multiple reviews.[12] Accordingly, TIPCO claims, the Department should adhere in the final results to the interest expense calculation used in the preliminary results.

Second, regarding the exchange gain offset to interest expense, TIPCO maintains that in its supplemental questionnaire response it corrected its deduction of exchange gains from interest expenses for precisely the reason put forth by the petitioners, i.e., in light of the Department's finding in the final results of the prior review. Thus, TIPCO claims, its interest calculation is in accordance with the Department's decision in the prior review.

DOC Position: Regarding TIPCO's reported G&A expense, we agree with the petitioners that the numerator and denominator were not calculated on the same basis. We have corrected the denominator in the manner suggested by the petitioners, to reflect a G&A ratio based on TIPCO's unconsolidated G&A expenses in relationship to its unconsolidated COGS. See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan, 63 FR 40434, 40440 (July 29, 1998).

Regarding the petitioners' claims concerning TIPCO's reported interest expense, we have accepted this expense as reported for the following reasons. First, we disagree with the petitioners' assertion that TIPCO's reported 1996 interest expense and cost of goods sold amounts must be disallowed due to insufficient documentation. Based on the information provided by TIPCO in this case, as well as the absence of any evidence to call into question the reliability of these figures, we have accepted these items as reported, in accordance with our normal practice.

In addition, we have allowed TIPCO's claimed exchange gain offset to interest expense. The amount that the petitioners assert was claimed as an offset reflects that reported in the initial response. Subsequently, TIPCO reduced its reported exchange gain to a minor fraction of that originally claimed, explaining that it was doing so in light of cur treatment of the company's exchange gains and losses in the 1995–96 final results.[13] We note that TIPCO made this reduction to its interest offset on its own initiative, as part of its supplemental questionnaire response. See TIPCO's February 9, 1998, supplemental questionnaire response (at 63 and at Exhibit 23B). For these reasons, we have accepted TIPCO's reported interest expenses for these final results.

SIFCO

Comment 1: Appropriate Comparison Market

SIFCO contends that the Department's selection of Japan as the appropriate comparison market to be used as the basis for normal value was erroneous. Instead, while acknowledging that Japan is the most viable third-country market in terms of volume and value of sales, SIFCO claims that Canada is the most appropriate comparison market in terms of price, cost of production, similarity of merchandise, and market size.

According to SIFCO, during verification it used samples to demonstrate the difference between the grade of merchandise sold to Japan

[12] TIPCO cites section 351.102(a) of the Department's regulations as stating that a proceeding "begins on the date of filing a petition * * * and ends on the date of publication of the earliest notice of: (1) Dismissal of petition, (2) Revision of initiation, (3) Termination of investigation, (4) A negative determination that has the effect of terminating the proceedings, (5) Revocation of an order, or (6) Termination of a suspended investigation."

[13] Contrary to the petitioners' assertion that we disallowed TIPCO's exchange rate gains generally in the 1995–96 final results, in fact we excluded only those exchange rate gains and losses related to accounts receivable, while including those relating to loans. 1995–96 Final Results, 63 FR at 7401.

versus that sold to the United States. SIFCO adds that in the sales verification report, the Department concluded that the products were sorted according to specifications reported in SIFCO's January 13, 1998, questionnaire response (at Appendix 2), and that the products destined for Japan were generally more yellow in color than the products destined for other countries. Based on those results, SIFCO argues, Japan is not the most appropriate comparison market because the merchandise sold to Japan is not similar in every aspect to the merchandise sold to the United States.

Furthermore, SIFCO claims that where prices in more than one third in a country satisfy the criteria of section 773(a)(1)(B)(ii) of the Act,[14] section 351.404(e)(1) of the Department's regulations provides that the Department generally will select the third country in which "[t]he foreign like product exported to a particular third country is more similar to the subject merchandise exported to the United States than is the foreign like product exported to other third countries." SIFCO claims that its reported sales data indicate that the merchandise sold to Japan was particular to the Japanese market, whereas most of the merchandise sold to Canada was also sold to the United States; therefore, the Department should use sales of the foreign like product to Canada as the basis for its calculation of normal value.

The petitioners respond, first, that the volume of SIFCO's sales to Japan was substantially greater than the volume of its sales to Canada, noting that, in accordance with section 351.404(e) of the Department's regulations, volume of sales is one of the primary criteria in the Department's selection of third-country markets. The petitioners contend that, in view of the magnitude of the sales volume to Japan and, because SIFCO has failed to prove that Japan represents a particular market situation such that it does not permit a proper comparison with the export price, the Department cannot reject Japan as the appropriate comparison market.

Second, the petitioners assert that the "nominal" product differences between SIFCO's Japanese sales and its U.S. sales do not render the Japanese market an unsuitable basis for normal value. The petitioners claim that the only differences claimed by SIFCO that would distinguish between the Japanese and the U.S. markets are in color and in trimming. Moreover, the petitioners argue that these differences are of little relevance to the selection of the appropriate comparison market because the majority of SIFCO's sales to Japan and to the United States were of standard grade. Acknowledging that fancy grade was sold only to Japan, the petitioners state that it nevertheless accounted for a relatively small volume (19 percent) of SIFCO's total Japanese sales.

Finally, the petitioners argue, Canada cannot be used as the comparison market for determining normal value because SIFCO's sales to Canada were not verified. Instead, the petitioners state, the Department verified SIFCO's sales to Japan and found no evidence that Japan is inappropriate as the comparison market. Finally, the petitioners argue that SIFCO's argument in favor of Canada as the appropriate comparison market was untimely, because, in accordance with section 351.301(d) of the Department's regulations, claims with respect to the proper comparison market must be made within 40 days of the transmittal of the questionnaire.

DOC Position: For these final results, we have continued to rely on Japan as the comparison market for SIFCO. This market is the most appropriate choice, considering both volume of sales and product comparability. With respect to sales volume, SIFCO's sales to Japan were approximately twice the volume of sales to Canada. In terms of product comparability, while SIFCO focuses on the fancy grade merchandise involved in a minority of sales to Japan, we note that SIFCO's POR sales to both Japan and the United States were predominantly of standard grade; such sales accounted for over 80 percent of the merchandise sold to both markets. While we recognize SIFCO's claim that certain of its other sales to Japan are fancy grade, this fact alone does not preclude our use of Japan as the comparison market. For these reasons, we continue to find that Japan is the most comparison market for SIFCO under the standard set forth in the Department's regulations. See 19 CFR 351.404(e)(1) and (2) (regarding product comparability and sales volume, respectively, as relevant criteria for third-country market selection).

Comment 2: Allocation of Sugar Costs

SIFCO argues that, in the preliminary results, sugar costs were erroneously included in the cost of manufacture for U.S. sales. Instead, SIFCO claims, all sugar costs should be allocated to the cost of manufacturing for sales to Japan. SIFCO points out that in its January 9, 1998, questionnaire response (at Appendix 6), it requested that sugar costs be excluded from the cost of manufacturing for sales to the United States because, as indicated by SIFCO's reported U.S. sales data, all products sold to the United States were packed in natural juice.

Contrary to SIFCO's claim, the petitioners argue that, during the POR, SIFCO sold to the United States canned pineapple fruit packed in heavy syrup. Notwithstanding the fact that the Department's cost verification report (at 2)[15] also states that all SIFCO's products sold to the United States were packed in natural juice, the petitioners note that Exhibit S–1 of the sales verification report indicates a particular sale to the United States packed in heavy syrup. Therefore, the petitioners argue, sugar costs should not be excluded from the cost of manufacturing of any products that contain sugar.[16]

The petitioners add that SIFCO's claim that sugar costs should be excluded from the calculation of cost of manufacturing for U.S. sales is irrelevant because CV was not used as normal value, as all U.S. sales were compared to sales in Japan. Finally, the petitioners argue that, because all sales to Japan were packed in syrup, sugar costs should not be removed from the costs of manufacturing for purposes of the test of sales to Japan made below the cost of production.

DOC Position: We acknowledge that in the cost verification report we erroneously stated that all of SIFCO's sales to the United States were packed in natural juice. The petitioners are correct in pointing out that the invoice attached to the sales verification report[17] as Exhibit S–1 does indicate that this U.S. sale was packed in syrup. We have reexamined SIFCO's reported U.S. sales list and have determined that

[14] Normal value is based on prices at which the foreign like product is sold (or offered for sale) for consumption in a country other than the exporting country or the United States, if (I) such price is representative, (II) the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by the exporter or producer in such other country is 5 percent or more of the aggregate quantity (or value) of the subject merchandise sold in the United States or for export to the United States, and (III) the administering authority does not determine that the particular market situation in such other country prevents a proper comparison with the export price or constructed export price.

[15] *Memorandum to Office Director from Cose Anolysts: Verificotion of the Cost of Production ond Constructed Value Dato Submitted by Siam Fruit Canning (1988) Co. Ltd., in the 1996–97 Administrotive Review of the Antidumping Duty Order on Canned Pineapple Fruit From Thoiland,* June 3, 1998.

[16] Heavy syrup contains sugar.

[17] *Memorandum to Office Director from Cose Anolysts: Verification of Sales Information Submitted by Siam Fruit Canning (1988) Co. Ltd., in the 1996–97 Administrative Review of the Antidumping Duty Order on Canned Pineapple Fruit From Thailand,* June 3, 1998.

this represents the only such sale during the POR. For the final results we have allocated sugar costs to all products that contained sugar.

Malee

Comment 1: Calculation of G&A Expenses

The petitioners assert that the G&A expenses for Malee Supply (1994) Co., Ltd. (Malee Supply) should be included in the calculation of Malee's G&A expenses because Malee Supply is a distributor of CPF in the home market. According to the petitioners, the Department's questionnaire (at D–20) explicitly instructs the respondent to include all relevant G&A incurred in connection with the production and sale of the foreign like product, including "an amount for administrative services performed on your company's behalf by its parent company of other affiliated party."

Malee responds that the Department should not include Malee Supply's selling and administrative expenses in the calculation of Malee's COP and CV because doing so would mis-classify selling expenses as production costs, and would also result in the double-counting of such expenses since Malee has already reported them as selling expenses. Malee states that Malee Supply, as Malee's subsidiary selling arm, has no other purpose than to perform selling functions and, therefore, its G&A expenses should be deemed selling expenses to be used as adjustments to home market price. In addition, Malee argues that even in cases where a selling agent has participated in further manufacturing, the Department has treated SG&A expenses as selling expenses, citing, *e.g., Oil Country Tubular Goods from Argentina; Final Determination of Sales at Less than Fair Value,* 60 FR 33539, 33550 (June 28, 1995) (*OCTG From Argentina*).

DOC Position: As we stated in response to TPC Comment 3, above, where an affiliate's costs pertain to reselling the merchandise to unaffiliated customers, it is our practice to treat such expenses as selling expenses. All of the expenses incurred by Malee Supply were related to sales activities on behalf of Malee's home market sales. See Page B–30 and Exhibit B–14 of Malee's October 21, 1997, response. Accordingly, we have treated these expenses as selling expenses.

Comment 2: Calculation of Interest

The petitioners argue that Malee should have calculated its interest factor based on Malee's consolidated financial statements, in accordance with the Department's normal practice, citing Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17160 (April 9, 1997) (*Cement from Mexico*), and *Camargo Correa Metais, S.A.* v. *United States,* 17 CIT 897 (1993).

Malee agrees with the petitioners' suggestion.

DOC Position: In accordance with the Department's practice (*see Cement from Mexico,* 62 FR at 17160), we have recalculated Malee's interest factor net of Malee's short-term interest income.

Comment 3: Conversion of U.S. Duty

Malee argues that, in the preliminary results, the Department failed to convert to U.S. dollars those U.S. duty expenses reported in Thai baht.

The petitioners respond that, acccording to Malee's October 20, 1997, questionnaire response (at C 25–26), Malee's U.S. duty was reported in U.S. dollars and no conversion is necessary.

DOC Position: We agree with the petitioners and have not made any adjustments to U.S. duty in the margin calculation.

Final Results of Review

As a result of our review, we determine that the following percentage weighted-average margins exist for the period July 1, 1996, through June 30, 1997:

Manufacturer/exporter	Margin (percent)
Siam Food Products Public Company Ltd.	0.59
The Thai Pineapple Public Company, Ltd.	5.24
Thai Pineapple Canning Industry Corp., Ltd.	4.37
Malee Sampran Factory Public Company Ltd.	0.30
The Prachuab Fruit Canning Co. Ltd.	11.87
Siam Fruit Canning (1988) Co. Ltd.	5.41
Vita Food Factory (1989) Co. Ltd.	51.16

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. We will direct the Customs Service to assess antidumping duties by applying the assessment rate to the entered value of the merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a) of the Act: (1) for the companies named above, the cash deposit rate will be the rate listed above, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results in which that manufacturer participated; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 24.64 percent, the all others rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as final reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–21927 Filed 8–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–803]

Notice of Postponement of Time Limit for Antidumping Duty Investigation: Extruded Rubber Thread from Indonesia

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

EFFECTIVE DATE: August 14, 1998.

FOR FURTHER INFORMATION CONTACT: Russell Morris, Eric Greynolds, or Stephanie Moore at (202) 482–2876, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Postponement

On April 20, 1998, the Department of Commerce (the Department) initiated an antidumping duty investigation of extruded rubber thread from Indonesia. On August 3, 1998, in accordance with section 351.205(e) of the Department's regulations (62 FR 27295, May 19, 1997), the petitioner made a timely request that the Department postpone its preliminary determination. As we find no compelling reasons to deny this request, we are postponing the preliminary determination in this investigation to no later than October 27, 1998, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended.

This notice is published pursuant to section 733(c)(2) of the Act, and 351.205(f).

Dated: August 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–21929 Filed 8–13–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–820]

Amendment to the Suspension Agreement on Fresh Tomatoes from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amendment to the Suspension Agreement on Fresh Tomatoes from Mexico.

SUMMARY: The Department of Commerce and producers/exporters of fresh tomatoes from Mexico signed an amendment to the Suspension Agreement on Fresh Tomatoes from Mexico. The amendment establishes new reference prices and provides for enhanced enforcement of the Suspension Agreement.

EFFECTIVE DATE: August 21, 1998.

FOR FURTHER INFORMATION CONTACT: Gary Taverman at (202) 482–0161 or Judith Wey Rudman at (202) 482–0192; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 28, 1996, the Department of Commerce ("the Department") and the producers/exporters of fresh tomatoes from Mexico signed the Suspension Agreement on Fresh Tomatoes from Mexico ("the Agreement") and, on November 1, 1996, the Agreement was published in the **Federal Register** (61 FR 56618). Following consultations with producers/exporters of fresh tomatoes from Mexico and with members of the domestic industry, on August 6, 1998, the Department accepted an amendment to the Agreement. The amendment establishes a second reference price and the time periods during which each reference price is applicable. In addition, the amendment establishes documentation requirements as a condition of release of subject tomatoes beyond the Customs port of entry and provides that the Department may notify producer/exporter trade organizations composed of signatory parties of any sales that may have been made at prices inconsistent with the Agreement. Finally, the amendment makes other minor changes to the Agreement to facilitate the Department's administration of the Agreement. The text of the amendment is attached to this notice.

Additional producers/exporters have signed the Agreement as amended. The additional signatories and the revisions provided for in the amendment ensure that the Agreement continues to eliminate completely the injurious effect of imports of tomatoes from Mexico, and that the Agreement continues to be in the public interest.

Dated: August 7, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Amendment to the Suspension Agreement on Fresh Tomatoes From Mexico

Consistent with the requirements of section 734(c) of the Tariff Act of 1930, as amended, to eliminate completely the injurious effect of exports to the United States and to prevent the suppression or undercutting of price levels of domestic tomatoes, the Department of Commerce (the Department) and signatory producers/exporters of subject merchandise agree to amend the Suspension Agreement on Fresh Tomatoes From Mexico (the Agreement) as indicated below. All other provisions of the Agreement remain in force and apply to this Amendment.

1. In order to establish a second reference price which would be applicable during the July 1 to October 22 time period and to revise the reference price applicable at all other times of the year, the parties amend the Agreement to add the following after the third paragraph of Appendix A:

The Department and the signatory producers/exporters agree to adjust the reference price applicable to imports into the United States between July 1 and October 22 of any given year. The Department has calculated a reference price for this period by calculating a ratio of Mexican tomato import prices to domestic tomato prices. The ratio consists of weighted-average prices for the United States and Mexico based on data reported by the Agricultural Marketing Service. As calculated pursuant to this methodology, the reference price for the July 1 through October 22 period will be $0.172 per pound (equivalent to $4.30 for a 25-pound box).

Effective October 23, 1998, the Department and the signatory producers/exporters have agreed to adjust the reference price applicable to imports into the United States between October 23 and June 30 of any given year. The Department has calculated a reference price for this period by calculating a ratio of Mexican tomato import prices to domestic tomato prices.

The ratio consists of weighted-average prices for the United States and Mexico based on data reported by the Agricultural Marketing Service. As calculated pursuant to this methodology, the reference price for the October 23 through June 30 period will be $0.2108 per pound (equivalent to $5.27 for a 25-pound box).

2. In order to revise the time periods during which separate summer/winter reference prices would be applicable and clarify that consultations may be requested at any time after the first year of the Agreement, the parties amend the first four sentences of section IV.G. of the Agreement ("Operations Consultations") to read as follows:

During the first anniversary month of this Agreement, the Department will consult with the signatory producers/exporters regarding the operation of the Agreement. Consultations may be requested by any party to the Agreement following the first anniversary of the Agreement. Consistent with the statutory requirement that the Agreement prevent the suppression or undercutting of price levels of domestic fresh tomatoes, the Department may revise the reference price following consultations under this provision. In particular, the Department expects to make downward or upward adjustments to the reference price to take into account any significant changes within the most recent time period equivalent to the period to which the adjusted price would apply (July 1–October 22; October 23–June 30).

3. In order to vest the Department with sole authority to make revisions to the weight chart used to apply the reference price to particular box configurations, the parties amend the sixth paragraph and first sentence of the seventh paragraph of Appendix A to read as follows:

The reference price for each type of box shall be determined based on the average weights stated in the chart attached as Amendment Appendix A. This chart was based on the average weights used by U.S. Customs at the port of Nogales, AZ for duty assessment purposes, as revised effective February 8, 1997. For example, if the average weight of a 3-layer, 6×6 box of tomatoes is stated as 30 pounds, the reference price for that box will be equal to 30 times the per pound reference price then in effect. If, based upon information that one or more average weights on the chart are no longer accurate, the Department determines to revise an average weight figure, the Department will provide 15 days notice to signatory producers/exporters (through the producer/exporter trade organizations party to this Agreement) prior to such revised average weights becoming effective for purposes of this Agreement. In making any revisions to the weight chart, the Department will coordinate with the U.S. Customs Service to obtain representative average weights of entries of fresh tomatoes from Mexico.

In the event that a signatory producer/exporter intends to export subject merchandise to the United States in a box for which there is no average weight on the chart, the signatory producer/exporter shall notify the Department in writing no later than 45 days prior to the date of the first export of such boxes to the United States.

4. In order to establish the "reference price declaration" as a condition of release of subject tomatoes beyond the Customs port of entry and to provide for the inclusion of additional information in the "reference price declaration," the parties amend section IV.C.1. of the Agreement ("Shipping and Other Arrangements") to read as follows:

On or after August 1, 1998, the United States shall require presentation of a declaration from the signatory producer/exporter, stating that the entry conforms with the requirement that the merchandise has been or will be sold at or above the reference price, as a condition of release into the United States of fresh tomatoes subject to this Agreement. The declaration presented to the U.S. Customs Service must be an original, dated, sequentially-numbered document signed by the signatory and shall include the signatory identification number, the brand label on the tomatoes, and the identity of the U.S. receiver. Copies of the declaration must be maintained by both the signatory and the U.S. importer to permit verification by the Department. The United States will prohibit the release into the United States of any fresh tomatoes produced by a signatory not accompanied by such a declaration.

5. In order to improve the monitoring of compliance with the Agreement by all parties, the parties amend the Agreement to add the following sentence after the first sentence of section IV.E.1. of the Agreement:

In addition, the Department may notify the potential inconsistency to any producer/exporter trade organization composed of the signatory parties to this Agreement.

6. Unless otherwise provided, the terms of this amendment must be implemented not later than the fifteenth day following signature by the producers/exporters and by the Department of Commerce.

The Parties agree that these amendments constitute an integral part of the Agreement.

Dated: August 6, 1998.

For U.S. Department of Commerce.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

	Date
For Agrovica ABC:	
Alejandro Canelos:	6/30/98
For Conrado Gonzalez Sandaval Y Copropiedad:	
Conrado Gonzalez:	7/23/98
For Rancho Santa Rosa:	
Daniel Gonzalez:	7/8/98
For members of the Confederacion de Asociaciones Agricolas del Estado (CAADES):	
Diego Ley:	6/30/98
For Rancho Camino Real S. de R.L. de C.V.:	
Diego Rojas Guevara:	7/30/98
For Vizcaino Agricola S.A. de C.V.:	
Ernesto Echavarria	6/30/98
For Rancho Seco:	
Felipe Ruiz Esparza A.	7/30/98
For Rancho Santa Lucia:	
Fernando A. Aragon	7/9/98
For DBA Dos Amigos:	
Fortino Heredia Villegas	7/4/98
For Productora Agricola Industrial del Noroeste, S.A.:	
Francisco J. Conejo C.	7/29/98
On behalf of: Antonio Rodriguez, Benjamin Rodriguez, Carlos Rodriguez, Victor Rodriguez	
For S.P.R. Campesinos de Lopez Rayon San Vicente de R.I.:	
Genaro Urquidez Ruiz	7/8/98
For Soc. de Prod. Rural de R.L. Maciel Romero, S.P.R. de R.L.:	
Gerardo Maciel	7/8/98
For Everardo Ramon Olmos Asencio	
Gilberto Olmos	7/10/98
For Agricola Yory:	
Hernan Galvez	6/30/98
For Rancho Nuevo Produce S.A. de C.V.:	
Hugo Belerra	7/30/98
For DBA, Punta Colonet, San Telmo S. de P.R. de R.I.:	
Jose Martinez Lozano	7/4/98
For Maria Trinidad Mesta Gonzalez:	
Manuel Ybarguen	7/29/98
For Rancho San Marcos:	
Marcos Marron	8/4/98
For Members of the Confederacion Nacional de Productores de Hortalizas (C.N.P.H.):	
Mario Robles	6/30/98
For Rancho San Miguel:	
Miguel A. Garcia A.	7/8/98
For Sociedad Agricola Bella Vista:	
Ramon Silva	7/31/98
For Agricola La Campana:	

	Date		Date		Date
Ricardo Castaneda	7/28/98	For Agricola San Simon S.A. de C.V.:		On behalf of: Victor Rodriguez	7/29/98
For Agrovida, S. de R.L. de C.V.: Roberto Rojas Guevara	7/30/98	Francisco J. Conejo C.			

Amendment Appendix A

CHART OF AVERAGE WEIGHTS SUSPENSION AGREEMENT ON FRESH TOMATOES FROM MEXICO

Type	Layers	Size	Avg kg Weight	Avg lb Weight*	July 1–October 22 $.172/lb Reference Price	October 23–June 30 $.2108/lb Reference Price
Tomato (cherry)		12 Baskets	6.32	13.93	$2.40	$2.94
Tomato (cherry)	Bulk	Bulk	8.13	17.92	3.08	3.78
Tomato (roma)	Bulk	UC 82**	11.69	25.77	4.43	5.43
Tomato	2	4x4	10.78	23.77	4.09	5.01
Tomato	2	4x5	10.81	23.83	4.10	5.02
Tomato	2	5x5	10.43	22.99	3.96	4.85
Tomato	2	5x6	9.71	21.41	3.68	4.51
Tomato	3	6x6	13.33	29.39	5.05	6.19
Tomato	3	6x7	12.92	28.48	4.90	6.00
Tomato	Bulk	LRG 25 lbs	12.15	26.79	4.61	5.65
Tomato (20/Box)	Bulk	Sml. Ctn.	5.57	12.28	2.11	2.59
Tomato (1 Layer)	1	Long Box	7.41	16.34	2.81	3.44
Tomato (Green) 20#	Bulk	Small	8.16	17.99	3.09	3.79
Tomato	1	4x5	5.12	11.29	1.94	2.38
Tomato	1	5x5	4.99	11.00	1.89	2.32
Tomato (30/Box)	1	Clusters	4.70	10.36	1.78	2.18

*Conversion factor from kg to lb based on 1 kg=2.20462 lbs
**Also applicable to 4/7 bushel cartons.

[FR Doc. 98–21930 Filed 8–13–98; 8:45 am]
BILLING CODE 3510–OS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application To Amend Certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 97–2A003."

The Association for the Administration of Rice Quotas, Inc. ("AARQ") original Certificate was issued on January 21, 1998 (63 FR 4220, January 28, 1998), and previously amended on June 4, 1998 (63 FR 31738, June 10, 1998). A summary of the application for an amendment follows.

Summary of the Application

Applicant: The Association for the Administration of Rice Quotas, Inc. ("AARQ"), c/o Thomas Ferrara, AC Humko Rice Specialities, 7171 Goodlett Farms Parkway, Memphis, TN 38018–4909.

Contact: M. Jean Anderson, Esquire, Telephone: (202) 682–7217.

Application No.: 97–2A003.

Date Deemed Submitted: August 4, 1998.

Proposed Amendment: AARQ seeks to amend its Certificate to add the

following companies as new "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2 (1)): Garnac Grain Co., Inc., Overland Park, KS; Truijillo & Sons, Inc., Miami, FL; Gulf Pacific Disc, Inc., Houston, TX; Gulf Pacific Rice Co., Inc., Houston, TX; and Gulf Rice Arkansas, Inc., Crawfordsville, AR.

Dated: August 10, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–21779 Filed 8–13–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, September 1, 1998 from 8:30 a.m. to 5:00 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; ATP Focused Program Selection Process and other ATP Issues; a report by the National Research Council's Board on Assessment of NIST Programs; and a laboratory tour. Discussions on staffing of management positions at NIST, and the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership scheduled to begin at 8:30 a.m. and to end at 9:10 a.m. on September 1, 1998, will be closed.

DATES: The meeting will convene September 1, 1998, at 8:30 a.m. and will adjourn at 5:00 p.m. on September 1, 1998.

ADDRESS: The meeting will be held in the Radio Building, Room 1107 (seating capacity 60, includes 35 participants), National Institute of Standards and Technology, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: Peggy A. Webb, Administrative Coordinator, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–2107.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 7, 1998, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Manufacturing Extension Partnership and the Advanced Technology Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 10, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–21837 Filed 8–13–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Judges Panel of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to Judges Panel of the Malcolm Baldrige National Quality Award (Judges Panel). The terms of some of the members of the Judges Panel will soon expire. NIST will consider nominations received in response to this notice of appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before August 28, 1998.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, Building 101, Room A605, Gaithersburg, MD 20899. Nominations may also be submitted via FAX to 301–948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: <http://www.quality.nist.gov>.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, Building 101, Room A605, Gaithersburg, MD 20899; telephone 301–975–2163; FAX–301–948–3716; or via e-mail at harry.hertz@nist.gov.

SUPPLEMENTARY INFORMATION:

1. Judges Panel Information

The Judges Panel was established in accordance with 15 U.S.C. 3711a(d)(1), the Federal Advisory Commission Act (5 U.S.C. app.2), The Malcolm Baldrige National Quality Improvement Act of 1987 (Public Law 101–107).

Objectives and Duties

1. The Judges Panel will ensure the integrity of the Malcolm Baldrige National Quality Award selection process by reviewing the results of examiners' scoring of written applications, and then voting on which applicants merit site visits by examiners to verify the accuracy of quality and business performance improvements claimed by applicants

2. The Judges Panel will ensure that individuals on site visit teams for the Award finalists have no conflict of interest with respect to the finalists. The Panel will also review recommendations from site visits, and recommend Award recipients.

3. The Judges Panel will function solely as an advisory body, and will comply with provisions of the Federal Advisory Committee Act,

4. The Panel will report to the Director of NIST.

Membership

1. The Judges Panel is composed of nine members selected on a clear,

standardized basis, in accordance with applicable Department of Commerce guidance. There will be a balanced representation from U.S. service and manufacturing industries, and will include members familiar with the quality and overall performance improvement operations of manufacturing companies, service companies, and small businesses who have established distinguished quality service in their area of business. No employee of the Federal Government shall serve as a member of the Judges Panel.

2. The Judges Panel will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Panel member shall be three years. All terms will commence on January 1 and end on December 31 of the appropriate year.

Miscellaneous

1. Members of the Judges Panel shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by 5 U.S.C. 5701 et seq.

2. The Judges Panel will meet three times per year. Additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one to four days in duration.

3. All Judges must annually participate in a three-day Examiner training course.

4. Committee meetings are closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409, and in accordance with section 552b(c)(4) of Title 5, United States Code. The meetings involve examination of records and discussion of Award applicant data and are therefore closed to the public since it is likely that trade secrets and commercial or financial information that is privileged or confidential may be disclosed.

II. Nomination Information

1. Nominations are sought from all U.S. service and manufacturing industries as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality and overall performance improvement operations of manufacturing companies, service companies, and small businesses. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the Judges Panel, and will actively participate in good faith in the tasks of the Judges Panel. Besides participation at meetings, members must be able to devote the equivalent of seventeen days, between meetings to either developing or researching topics of potential interest, reading Baldrige applications, and so forth, in furtherance of their committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Judges Panel membership.

Dated: August 10, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–21838 Filed 8–13–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081198E]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting via teleconference.

DATES: The teleconference will be held Thursday, August 27, 1998. It will begin at 2:00 p.m. eastern standard time (EST) and continue until approximately 5:00 p.m.

ADDRESSES: Public meetings via teleconference will be held in St. Petersburg, FL; Panama City, FL; Miami, FL; Pascagoula, MS; and Galveston, TX (see **SUPPLEMENTARY INFORMATION**).

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone 813–228–2815.

SUPPLEMENTARY INFORMATION: A listening phone will be located at each of the following locations: NMFS Southeast Regional Office, 9721 Executive Center Drive North, Suite 201, St. Petersburg, FL, telephone 813–570–5305; NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL, telephone 850–234–6541; NMFS Miami Laboratory, Room 200, 75 Virginia Beach Drive, Miami, FL, telephone 305–361–4259; NMFS Mississippi Laboratories, 3209 Frederick Street, Pascagoula, MS, telephone 228–762–4591; and NMFS Galveston Laboratory, 4700 Avenue U, Galveston, TX, telephone 409–766–3500.

The Council will review scientific findings regarding a change in definitions of maximum sustainable yield and a rebuilding schedule for red snapper. The Council also will consider potential changes and information provided by NMFS on the performance level of bycatch reduction devices to determine if the Council should request emergency action by the Secretary of Commerce, to release reserve total allowable catch in order to avoid severe adverse economic and social impacts.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 20, 1998.

Dated: August 11, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–22028 Filed 8–12–98; 2:02 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072198A]

ICCAT Advisory Committee; Public Meeting; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting; correction.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas, in conjunction with the Highly Migratory Species Management Division of NMFS, plans to hold a public meeting to discuss International and Domestic issues relating to the conservation of tunas and tuna-like species in the Atlantic Ocean and its adjacent seas.

DATES: Tuesday, October 6, 1998, 7 pm to 10 pm.

ADDRESSES: Howard Johnson, 2625 North Salisbury Boulevard, Salisbury, Maryland 21801 (Formerly Holiday Inn of Salisbury).

FOR FURTHER INFORMATION CONTACT: Jonathon Krieger, 301–713-2276.

SUPPLEMENTARY INFORMATION: The notice document published on July 30, 1998, in the **Federal Register** contained an error in reference to the site of the ICCAT Advisory Committee meeting.

Need for Correction

In the **Federal Register** notice published Thursday, July 30, 1998, (63 FR 40701), FR Doc. 98–20392, on page 40701 in the first column, under the **SUPPLEMENTARY INFORMATION** heading in the 15th and 16th lines, the meeting site was listed as the Holiday Inn, 2625 North Salisbury Boulevard, Salisbury, Maryland 21801. The site of the meeting is corrected to read the Howard Johnson, 2625 North Salisbury Boulevard, Salisbury, Maryland 21801.

Dated: August 10, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–21932 Filed 8–13–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

[OMB Control No. 0704–0386]

Information Collection Requirements; Small Business Programs

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. This information collection requirement is currently approved by the Office of Management and Budget (OMB) for use through February 28, 1999, under OMB Control Number 0704–0386. DoD proposes that OMB extend its approval for use through February 28, 2002.

DATES: Consideration will be given to all comments received by October 13, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, PDUSD(A&T) DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite OMB Control Number 0704–0386 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0386 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Susan L. Schneider, (703) 602–0131. A copy of the information collection requirements contained in the DFARS text is available electronically via the Internet at: http://www.acq.osd.mil/dp/dars/dfars.html.

Paper copies of the information collection requirements may be obtained from Ms. Susan L. Schneider, PDUSD(A&T) DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title Associated Forms, and Associated OMB Control Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 219, Small Business Programs, and the clause at 252.219–7003; OMB Control Number 0704–0386.

Needs and Uses: This collection of information is necessary to implement the reporting requirements of the acquisition-related sections of the Small Business Act (15 U.S.C. 631, et seq.) and applicable sections of the Armed Services Procurement Act (10 U.S.C. 2302, et seq.).

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 41.

Number of Respondents: 41.

Responses Per Respondent: 1.

Annual Responses: 41.

Average Burden Per Response: 1.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

DFARS 219.704 and the clause at DFARS 252.219–7003, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (DoD Contracts), require prime contractors to notify the administrative contracting officer of any substitutions of firms that are not small, small disadvantaged, or women-owned small businesses for the firms listed in those subcontracting plans that specifically identify small, small disadvantaged, and women-owned small businesses. Notifications must be in writing and may be submitted in a contractor-specified format.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 98–21909 Filed 8–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–42]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance 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, DSAA/COMPT/RM (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–42, with attached transmittal, policy justification, sensitivity of technology and Section 620C(d) of the Foreign Assistance Act of 1961.

Dated: August 7, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

31 JUL 1998
In reply refer to:
I-67670/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-42, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Greece for defense articles and services estimated to cost $150 million. Soon after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of that statute.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 98-42

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Greece

(ii) Total Estimated Value:

Major Defense Equipment*	$ 135 million
Other	$ 15 million
TOTAL	$ 150 million

(iii) Description of Articles or Services Offered:
One thousand three hundred twenty-two STINGER-RMP Block 1 International missiles including 1,286 complete missile rounds without gripstocks and 36 lot acceptance missiles; 188 gripstock control group guided missile launchers; battery coolant units; publications and technical data; support equipment; and other related elements of logistics support.

(iv) Military Department: Army (XIS)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 31 JUL 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Greece - STINGER-RMP Block 1 International Missiles

The Government of Greece (GOG) has requested a possible sale of 1,322 STINGER-RMP Block 1 International missiles including 1,286 complete missile rounds without gripstocks and 36 lot acceptance missiles; 188 gripstock control group guided missile launchers; battery coolant units; publications and technical data; support equipment; and other related elements of logistics support. The estimated cost is $150 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the military capabilities of Greece and furthering NATO rationalization, standardization and interoperability.

The proposed sale of STINGER-RMP Block 1 International missiles will greatly improve Greece's defense posture. GOG desires these articles as part of its five year military force modernization program. The missiles will be provided in accordance with, and subject to, the limitation on use and transfer provided for under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Greece, which already has STINGER-RMP Block 1 International missiles in its inventory, will have no difficulty absorbing these additional missiles.

The prime contractor will be Raytheon, Tucson, Arizona. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Greece.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-42

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The STINGER Block 1 International missile system, gripstock, hardware, software and documentation contain sensitive technology and are classified Confidential. The guidance section of the missile and tracking head trainer contain highly sensitive technology and are classified Confidential.

2. Missile system hardware and fire unit components contain sensitive/critical technologies. STINGER critical technology is primarily in the area of design and production know-how and not end-items. This sensitive/critical technology is inherent in the hybrid microcircuit assemblies; microprocessors; magnetic and amorphous metals; purification; firmware; printed circuit boards; laser range finder; dual detector assembly; detector filters; automatic text and associated computer software; optical coatings; ultraviolet sensors; semi-conductor detectors; infrared band sensors; compounding and handling of electronic, electro-optic, and optical materials; equipment operating instructions; primary and reserve battery; energetic materials formulation technology; energetic materials fabrication and loading technology; warhead components seeker assembly and the Identification Friend or Foe (IFF) system with Mode 3 capabilities.

3. Information on vulnerability to electronic countermeasures and counter-countermeasures, system performance capabilities and effectiveness, and test data are classified up to Secret.

4. Loss of this hardware and/or data could permit development of information leading to the exploitation of countermeasures. Therefore, if a technologically capable adversary were to obtain these devices, the missile system could be compromised through reverse engineering techniques which could defeat the weapon systems effectiveness.

5. A determination has been made that the Government of Greece 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.

United States Department of State

Under Secretary of State
for Arms Control and International
Security Affairs

Washington, D.C. 20520

JUL 31 1998

Certification Under Section 620C(d)
Of The Foreign Assistance Act of 1961, As Amended

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), Executive Order 12163 (sec. 1-201(a)(13)) and the Secretary of State's memorandum of December 15, 1997, I hereby certify that the furnishing to Greece of one thousand three hundred twenty-two STINGER-RMP Block 1 international missiles, 188 gripstock control group guided missile launchers and related elements of logistics and program support at an estimated cost of $150 million, is consistent with the principles contained in section 620C(b) of the Act.

This certification will be made part of the notification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the above-named articles and services, and is based on the justification accompanying said notification, of which said justification constitutes a full explanation.

John D. Holum
Acting Under Secretary
for Arms Control and
International Security
Affairs / Director, U.S. Arms
Control and Disarmament Agency

[FR Doc. 98-21806 Filed 8-13-98; 8:45 am]
BILLING CODE 5000-04-C

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice.

ACTION: Notice of Proposed Amendments.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (1995 ed.) [MCM]. The Secretary of Defense requested that the Department of Defense (DoD) General Counsel task the Joint Service Committee (JSC) on Military Justice to review the applicable sections of the MCM related to adultery and to recommend clarifying guidance if necessary. The JSC was directed to examine the treatment of adultery in the MCM and to consider under what circumstances adultery is prejudicial to good order and discipline or is of a nature to bring discredit upon the armed forces—a prerequisite to adultery being an offense under the Uniform Code of Military Justice. The JSC was also directed to determine whether the MCM provisions are adequate to ensure fair and relatively consistent treatment of servicemembers. A Senior Review Panel of Department of Defense civilian attorneys and judge advocates was established to evaluate the recommendations of the JSC. After soliciting input from field commanders and receiving comments from interested organizations and parties outside the Department of Defense, the JSC and Senior Review Panel recommended additional guidance to the MCM provisions on adultery. This guidance further defines when adulterous conduct is prejudicial to good order and discipline or is of a nature to bring discredit upon the armed forces and provides a list of factors to assist commanders in making such determinations.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice is provided in accordance with DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any persons.

DATES: Comments on the proposed changes must be received no later than October 28, 1998, for consideration by the JSC.

ADDRESSES: Comments on the proposed changes should be sent to Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000.

FOR FURTHER INFORMATION CONTACT: Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000, (202) 767–1539; FAX (202) 404–8755.

The full text of the affected section of the Manual for Courts-Martial follows:

Section IV.

Paragraph 62. Article 134 (Adultery)

a. Text See Paragraph 60.

b. Elements.

(1) That the accused wrongfully had sexual intercourse with a certain person;

(2) That, at the time, the accused or the other person was married to someone else; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. Explanation.

(*1) Nature of offense.* Adultery is clearly unacceptable conduct, and it reflects adversely on the service record of the military member.

(*2) Conduct prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces.* To constitute an offense under the UCMJ, the adulterous conduct must either be directly prejudicial to good order and discipline or service discrediting. Adulterous conduct that is directly prejudicial includes conduct that has an immediate, obvious and measurably divisive effect on unit or organization discipline, morale or cohesion, or is clearly detrimental to the authority or stature of or respect toward a servicemember. Adultery may also be service discrediting, even though the conduct is only indirectly or remotely prejudicial to good order and discipline. Discredit means to injure the reputation of the armed forces and includes adulterous conduct that has a tendency, because of its open or notorious nature, to bring the service into disrepute, make it subject to public ridicule, or which lowers it in public esteem. While adulterous conduct that is private and discreet in nature may not be service discrediting by this standard, under the circumstances it may be determined to be conduct prejudicial to good order and discipline. Commanders should consider all relevant circumstances, including but not limited to the following factors, when determining whether adulterous acts are prejudicial to good order and discipline or are of a nature to bring discredit upon the armed forces:

(a) the accused's marital status, military rank, grade, or position;

(b) The co-actor's marital status, military rank, grade, and position, or relationship to the armed forces;

(c) The military status of the accused's spouse or the spouse of co-actor, or their relationship to the armed forces;

(d) The impact, if any, of the adulterous relationship on the ability of the accused, the co-actor, or the spouse of either to perform their duties in support of the armed forces;

(e) The misuse, if any, of government time and resources to facilitate the commission of the conduct;

(f) Whether the conduct persisted despite counseling or orders to desist; the flagrancy of the conduct, such as whether any notoriety ensued; and whether the adulterous act was accompanied by other violations of the UCMJ;

(g) The negative impact of the conduct on the units or organizations of the accused, the co-actor or the spouse of either of them, such as a detrimental effect on unit or organization morale, teamwork, and efficiency;

(h) Whether the married accused or co-actor was legally separated; and

(i) Whether the adulterous misconduct involves an ongoing or recent relationship or is remote in time.

(3) *Marriage.* A marriage exists until it is dissolved in accordance with the laws of a competent state or foreign jurisdiction.

(4) *Mistake of fact.* A defense of mistake of fact exists if the accused had an honest and reasonable belief either that the accused and the co-actor were both unmarried, or that they were lawfully married to each other. If this defense is raised by the evidence, then the burden of proof is upon the United States to establish that the accused's belief was unreasonable or not honest.

d. *Lesser included offense.* Article 80-attempts. Adultery is not a lesser included offense of rape.

e. *Maximum punishment.* Dishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year.

Add the following subparagraph to the analysis of Article 134 (Adultery) found at appendix 23, page A23–16 of the MCM.

"c. *Explanation.*

(1) Subparagraph (2) is based on *United States.* v. *Snyder,* 4 C.M.R. 15 (1952); *United States* v. *Ruiz,* 46 M.J. 503 (A.F.Ct.Crim.App. 1997); *United States* v. *Green,* 39 M.J. 606 (A.C.M.R. 1994); *United States* v. *Collier,* 36 M.J. 501 (A.F.C.M.R. 1992); *United States* v. *Perez,* 33 M.J. 1050 (A.C.M.R. 1991); *United States* v. *Linnear,* 16 M.J. 628 (A.F.C.M.R. 1983); Part IV, paragraph 60c(2)(a) of MCM. Subparagraph (3) is based on *United States* v. *Poole,* 39 M.J. 819 (A.C.M.R. 1994). Subparagraph (4) is based on *United States* v. *Fogarty,* 35 M.J. 885 (A.C.M.R. 1992); Military Judges' Benchbook, DA PAM 27–9, paragraph 3–62–1 and 5–11–2 (30 Sep. 1996). See R.C.M. 916(j) and (l)(1) for a general discussion of mistake of fact and ignorance, which cannot be based on a negligent failure to discover the true facts.

(2) When determining whether adulterous acts constitute the offense of adultery under Article 134, commanders should consider the listed factors. Each commander has discretion to dispose of offenses by members of the command. As with any alleged offense, however, under R.C.M. 306(b) commanders should dispose of an allegation of adultery at the lowest appropriate level. As the R.C.M. 306(b) discussion states, many factors must be taken into consideration and balanced, including, to the extent practicable, the nature of the offense, any mitigating or extenuating circumstances, the character and military service of the military member, any recommendations made by subordinate commanders, the interests of justice, military exigencies, and the effect of the decision on the military member and the command. The goal should be a disposition that is warranted, appropriate, and fair. In the case of officers, also consult the explanation to paragraph 59 in deciding how to dispose of an allegation of adultery.

Dated: August 7, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–21807 Filed 8–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, August 24, 1998.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with Section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. § 10(d)(1994)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly, this meeting will be closed to the public.

Dated: August 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–21805 Filed 8–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on September 1, 1998; September 8, 1998; September 15, 1998; and September 22, 1998, September 29, 1998 at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: August 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–21804 Filed 8–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Performance Review Board Membership

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Board for the Defense Finance and Accounting Service.

EFFECTIVE DATE: August 14, 1998.

FOR FURTHER INFORMATION CONTACT: Sandra L. Burrell, Defense Finance and Accounting Service, DFAS–HQ–H, 1931 Jefferson Davis Highway, Arlington, VA 22240–5291.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service Performance Review Boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives:

Brigadier General Roger W. Scearce, Deputy Director, Defense Finance and Accounting Service

Leon Krushinski, Deputy Director—Cleveland Center, Defense Finance and Accounting Service

Steve Turner, Director—Denver Center, Defense Finance and Accounting Service

Ida Faye Groves, Deputy Director—Columbus Center, Defense Finance and Accounting Service

David Harris, Deputy Director—Denver Center, Defense Finance and Accounting Service

David Burman, Deputy Director—Indianapolis Center, Defense Finance and Accounting Service

Lydia Moschkin, Director for Systems Integration, Defense Finance and Accounting Service

C. Vance Kauzlarich, Director for Information and Technology, Defense Finance and Accounting Service

Edward Harris, Deputy Director for Accounting, Defense Finance and Accounting Service

John Barber, Deputy Director for Customer Service and Administration, Defense Finance and Accounting Service

Robert McNamara, Special Assistant for Consolidation Management, Defense Finance and Accounting Service.

Dated: August 10, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–21808 Filed 8–13–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of the Revised Draft Environmental Impact Statement (DEIS) for Military Training in the Marianas, Territory of Guam and Commonwealth of the Northern Mariana Islands (CNMI)

AGENCY: U.S. Pacific Command (USCINCPAC), DOD.

ACTION: Notice.

SUMMARY: The USCINCPAC announces that a Revised DEIS has been prepared and filed with the U.S. Environmental Protection Agency (EPA). This Revised DEIS concerns ongoing and proposed military training in the Marianas, Territory of Guam, and CNMI. The Revised DEIS supersedes the original DEIS filed in February 1997. Limited copies of the Revised DEIS are available upon request and public comments are solicited.

DATES: Submit comments on or before September 28, 1998.

ADDRESSES: Requests for single copies of the Revised DEIS and submittal of written comments for inclusion into the official record should be forwarded to Mr. Fred Minato (Code 231FM), Pacific Division, Naval Facilities Engineering Command, Pearl Harbor, Hawaii 96860–7300 or via electronic mail (see **SUPPLEMENTARY INFORMATION** for electronic filing address).

FOR FURTHER INFORMATION CONTACT: Mr. Fred Minato (808) 471–9338.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the USCINCPAC has prepared and filed with the U.S. EPA the above referenced Revised DEIS.

The Revised DEIS is based on both oral and written comments received on the original DEIS. The Notice of Announcement of Public Hearing and Availability of the original DEIS of January 1997 was published in the **Federal Register** on February 11, 1997 (62 FR 6228) and local newspapers on February 14 through 16, 1997, and Public Meetings were conducted during the period March 3 through 6, 1997, on Guam, Rota, Tinian, and Saipan.

The Revised DEIS has been distributed to various federal, territorial, and commonwealth agencies, elected officials, individuals and organizations in the community, public libraries, and the media, including all parties who participated/commented on the original DEIS. A limited number of single copies are available at the address listed.

The Revised DEIS evaluates alternative uses of DOD controlled lands on Guam, Tinian, Rota, and Farallon de Medinilla (FDM) for training by Navy, Army, Air Force, Marine Corps, National Guard, and Army Reserve forces stationed on Guam or transiting the region. Most of the training land uses described in the Revised DEIS are continuing activities; a small number of areas are also proposed for new training use. The alternatives are (1) No New Action, consisting of all ongoing land use for military training; (2) No Land Use, which is stopping use of one or more areas for training which has previously occurred; (3) the Preferred Alternative, which includes ongoing training land use and most, but not all, newly proposed training land uses; and (4) Not-Preferred Action Alternatives, which includes newly proposed training land uses which are not necessary to meet the purpose and need and which have significant impacts that cannot be mitigated.

The training areas on Guam proposed for continuing and new military training activities are Navy and Air Force sites (Andersen Air Force Base, Waterfront Annex, Ordnance Annex, Naval Computer and Telecommunications Area Master Station Finegayan and Barrigada), private lands along the Ylig and Talofofo Rivers, and a non-military paradrop zone in Dandan. Areas on Rota proposed for new and continuing training consist of the airport and a small area within West Harbor. Areas currently used for training on Tinian are within the Military Lease Area, with limited activities in San Jose Harbor. The entire island of FDM is used as a live fire range.

Continuing and proposed training use of these areas include field maneuvers and logistics support, aviation, amphibious landings, live weapons fire at existing and proposed ranges, underwater demolitions, naval gunfire, and aerial bombardment. The proposed action also includes construction or installation of facilities at several locations: a small arms range and mortar range on Tinian, breaching or shooting houses on Tinian, a logistics support base camp and security gates on Tinian, a sniper range and breaching house in the Ordnance Annex, extension of several small arms ranges in the Waterfront Annex, and crew-served weapons ranges on FDM.

To be incorporated in the official record, all written statements must be postmarked on or before September 28, 1998, and mailed to Mr. Fred Minato at the address listed or transmitted by facsimile transmission to (808) 474–5909. Electronic Filing Address: You may submit comments and data by electronic mail to: fminato@efdpac.navfac.navy.mil.

Dated: August 10, 1998.

Michael I. Quinn,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–21728 Filed 8–13–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the Introduction of the V–22 to Second Marine Aircraft Wing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy announces its intent to prepare an environmental impact statement for the introduction of the V–22 to Second Marine Aircraft Wing. Four public scoping meetings will be held. Agencies and the public are invited to provide written comments.

DATES: All written comments must be received no later than September 21, 1998. Public Meeting dates are as follows:

1. August 31, 1998, from 3:30 pm to 8:30 pm at Atlantic Elementary School, Atlantic, North Carolina;
2. September 1, 1998, from 3:30 pm to 8:30 pm at Pollocksville Elementary School on Trenton Street, Pollocksville, North Carolina;
3. September 2, 1998, from 3:00 pm to 8:00 pm at Onslow County Public Library, 58 Doris Avenue East, Jacksonville, North Carolina;
4. September 3, 1998, from 3:00 pm to 8:00 pm at Havelock Elementary School on Cunningham Boulevard, Havelock, North Carolina.

ADDRESSES: Written comments, statements and/or questions regarding scoping issues should be addressed to: Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, VA, 23511–2699 (Attention: Mr. Jim Haluska, Code 203).

FOR FURTHER INFORMATION CONTACT: Mr. Jim Haluska, (757) 322–4889, fax (757) 322–4894, email haluskjd@efdlant.navfac.navy.mil.

SUPPLEMENTARY INFORMATION: The V–22 aircraft, known as the Osprey, represents a new technology in military aviation. This aircraft utilizes tilt-rotary technology to enable it to operate like a rotary-wing aircraft and a fixed-wing aircraft. The V–22 will replace the CH–46E and CH–53D rotary-wing aircraft. Accordingly, its primary mission will be to support Fleet Marine Expeditionary Force training and operations. The first aircraft is scheduled to be delivered to the Marine Corps in 2000 and delivery of the final aircraft is scheduled in 2014.

The Marine Corps intends to introduce the V–22 to the Second Marine Corps Aircraft Wing first, then introduce it to the Third Marine Aircraft Wing and First Marine Aircraft Wing. Delivery of V–22 to Second Marine Air Wing is scheduled to begin in 2000 and be complete in 2006. Introduction of the V–22 to Third and First Marine Air Wings would commence after introduction to the Second Marine Air Wing is complete.

The proposal being evaluated in this EIS is the basing of six squadrons of fleet V–22 aircraft to the Second Marine Aircraft Wing. Also, this proposal includes the establishment of a Fleet Replacement Squadron, which would provide training for all military pilots. This proposal includes construction of facilities to accommodate the aircraft, equipment and personnel. Finally, the proposal includes the use of existing outlying fields and airspace for military aircraft in support of training.

The primary mission of the V–22 in Second Marine Aircraft Wing will be to support medium-lift requirements of Second Marine Expeditionary Force training and operations. Marine Corps Base (MCB) Camp Lejeune is the home of the Second Marine Expeditionary Force. Accordingly, alternatives to be considered in the EIS are all Department of Defense aviation facilities within the operational radius (300 miles) of the V–22 from MCB Camp Lejeune. Alternatives identified so far include Marine Corps Air Station (MCAS) New River, MCAS Cherry Point, MCAS Beaufort, Marine Corps Air Facility Quantico, Naval Air Station (NAS) Oceana, NAS Norfolk, Fort Bragg, Pope Air Force Base (AFB), and Langley AFB. Additional alternatives discovered during preparation of the EIS will be evaluated appropriately.

To focus the EIS analysis to those alternatives that are reasonable, a screening criteria will be used. These criteria include compatibility of MV–22 operations with existing aviation operations, proximity to MCB Camp Lejeune, availability of existing facilities to support aircraft, equipment and personnel, and proximity to existing outlying landing fields.

Environmental issues identified thus far to be addressed in the EIS include: geological resources, biological resources, water resources, noise, air quality, land use compatibility, cultural resources, socioeconomics, environmental justice, public health and safety, transportation/circulation, aesthetics, utilities, hazardous materials, and solid waste.

Dated: August 10, 1998.

Duncan Holaday,

Deputy Assistant Secretary of the Navy (Installations and Facilities).

[FR Doc. 98–21937 Filed 8–13–98; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 13, 1998.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment

addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 10, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Federal Stafford Loan (Subsidized and Unsubsidized) Program Master Promissory Note.

Frequency: On occasion.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 2,800,000

Burden Hours: 2,800,000.

Abstract: This promissory note is the means by which a Federal Stafford Program Loan borrower promises to repay his or her loan.

Office of the Under Secretary

Type of Review: New.

Title: Survey of Federal Work-Study Students.

Frequency: One time.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 1,068.

Burden Hours: 1,752.

Abstract: Results from this survey will contribute to the U.S. Department of Education (ED) understanding and responsiveness of federal student aid programs. Particularly, this survey will provide ED with nationally-representative data on the experiences and satisfaction of postsecondary education student participating in the Federal Work-Study (FWS) program. Results will give policy makers a first look at work activities of FWS students and provide a baseline measure of student satisfaction with the FWS program.

[FR Doc. 98–21811 Filed 8–13–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 10, 1998. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before October 13, 1998.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address Pat__Sherrill@ed.gov, or should be faxed to 202–708–8196.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 10, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Federal Interagency Coordinating Council: Family Member Suggested Application/Nomination Form.

Abstract: The forms to the Call for Family Member Nominations for the Federal Interagency Coordinating Council (FICC) Packet will allow family members to clearly understand the responsibilities of the position and know what types of information will assist the search committee in selecting people to recommend to the Secretary of Education who will make the final appointment. The Call for Family Member Nominations for the Federal Interagency Coordinating Council (FICC) Packet will be distributed by all the agencies participating on the FICC as well as by state and local public and private agencies and family and disability advocacy organizations. The law requires that at least 20% of the

members of the FICC be parents of children with disabilities age 12 or under, of whom at least one must have a child with a disability under the age of 6.

Additional Information: The Department is requesting emergency clearance for the Call for Family Member Nominations for the Federal Interagency Coordinating Council (FICC) Packet due to an unanticipated event. Three parent positions expired in the spring of 1998 and were extended one year due to extensive changes in the staffing and functioning of the FICC. One resignation has occurred resulting in an under representation of parents on the FICC and lack of compliance with the statute. Failure to fill these positions will result in an under representation of parent members on the FICC and limit the voice of parents in decisions that are made. Therefore, we are asking that emergency clearance be granted by September 10, 1998 so that we can widely distribute the call for nominations and fill the vacant positions on the FICC in a timely manner.

Frequency: On occasion.

Affected Public: Individuals or households; Not-for-profit institutions; Federal Government; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.
Burden Hours: 200.

[FR Doc. 98–21813 Filed 8–13–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 14, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: August 10, 1998.

Hazel Fiers,

Acting Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Secretary's Awards for Outstanding Adult Education and Literacy Programs.

Frequency: Every other year.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 40.
Burden Hours: 1,600.

Abstract: The Secretary's Awards identifies programs featuring promising practices in family literacy, welfare to further education or work, services to out-of-school youth, or corrections.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Talent Search and Educational Opportunity Centers Programs Annual Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions; Federal Government; State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 500.
Burden Hours: 3,000.

Abstract: Talent Search and Educational Opportunity Centers grantees are required to submit annual performance reports to the Department so that ED personnel can evaluate the grantees' performance and assess prior experience points.

[FR Doc. 98–21812 Filed 8–13–98; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada Test Site

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site.

DATES: Wednesday, September 2, 1998: 5:30 p.m.–9:00 p.m.

ADDRESSES: U.S. Department of Energy, Nevada Support Facility, Great Basin Room, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, (702) 295–0197.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m.—Call to Order

5:40 p.m.—Presentations
7:00 p.m.—Public Comment/Questions
7:30 p.m.—Break
7:45 p.m.—Review Action Items
8:00 p.m.—Approve Meeting Minutes
8:10 p.m.—Committee Reports
8:45 p.m.—Public Comment
9:00 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on August 10, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–21877 Filed 8–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATE: Wednesday, September 2, 1998, 6:00 p.m.–9:30 p.m.

ADDRESSES: Ramada Inn, 420 S. Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Mr. Earl Leming, Director of the Tennessee Department of Environmental Conservation DOE Oversight Division, will discuss state regulatory perspective and the SSAB's participation in the process.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–0314.

Issued at Washington, DC on August 10, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–21879 Filed 8–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site.

DATES: Wednesday, September 9, 1998: 7:00 p.m.–9:00 p.m.; Thursday, September 10, 1998: 9:00 a.m.–5:00 p.m.; Friday, September 11, 1998: 8:30 a.m.–4:00 p.m.

ADDRESSES: DoubleTree Inn, 304 SE Nye Avenue, Pendleton, OR 97801.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352, (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

The Board will receive information on and discuss issues related to the Groundwater/Vadose Zone Project—overview, program objectives, schedule and regulatory perspectives; Tank Waste Remediation System (TWRS)—TWRS Vitrification/Privatization—Report to Congress, Technical Approach, Schedule and Tri-Party Agreement Changes, Cost, and Contract Structure; Intersite Discussion Workshops; and the Nevada SSAB Low-Level Waste Seminar. The Board will also receive update on the Spent Fuel Tri-Party Agreement Negotiations (M–34).

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and

copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling him at (509) 376–9628.

Issued at Washington, DC on August 10, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–21880 Filed 8–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Openness Advisory Panel.

Date and Time: Friday, August 28, 1998, 8:30 A.M.–4:00 P.M.

Place: Lowes L'Enfant Plaza Hotel, Monet I Room, 480 L'Enfant Plaza, SW, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Openness Advisory Panel is to provide advice to the Secretary of Energy Advisory Board regarding the status and strategic direction of the Department's classification and declassification policies and programs, and other aspects of the Department's ongoing Openness Initiative. The Panel's work will help institutionalize the Department's Openness Initiative.

Tentative Agenda

Friday, August 28, 1998

8:30–8:45 AM—Opening Remarks & Introductions—Dr. Richard A. Meserve, Chairman

8:45–9:15 AM—Presentation & Demonstration: Status of Human Radiation Experiments Disclosure & Records Access—Elly Melamed, Office of Environmental Safety & Health

9:15–9:45 AM—Presentation: Status of DOE's Long-Term Data Stewardship Program at EM Sites—Steven Livingstone, Office of Environmental Management

9:45–10:15 AM—Presentation & Demonstration: "DOE Information Bridge" Technology Tool—Walter Warnick, Office of Energy Research

10:15–10:30 AM—Break

10:30–11:00 AM—Status Report: Implementation of OAP Interim Report Recommendations—Howard Landon, Office of Information Management; and Richard Lyons, Office of Declassification

11:00–11:30 AM—Guest Presentation & Discussion: Perspectives on Openness—Rose Gottemoeller, Director of the Office of Nuclear Nonproliferation and National Security (Invited)

11:30–11:45 AM—Public Comment Period

11:45–1:00 PM—Lunch Break

1:00–3:45 PM—Working Session: Panel & Subpanel Organization, Scope, and Work Plans—OAP Members, Facilitated by Dr. Richard Meserve

3:45–4:00 PM—Public Comment Period

4:00 PM—Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

Public Participation: The Chairman of the Panel is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, DC, the Panel welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Information on the Openness Advisory Panel may also be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on August 10, 1998

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–21878 Filed 8–13–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–700–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

August 10, 1998.

Take notice that on July 30, 1998, Columbia Gas Transmission Corporation (Columbia Gas), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–1046, filed in Docket No. CP98–700–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon, certain natural gas facilities located in Greene County, Pennsylvania. Columbia Gas makes such request under its blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Columbia Gas proposes to abandon approximately 0.61 mile of 10-inch transmission Line 10 and appurtenances, 0.05 mile of 4-inch transmission Line 803 and appurtenances, and one point of delivery to Columbia Gas of Pennsylvania, Inc. (CPA). It is stated that the section of Line 10 proposed to be abandoned, is an uncoated pipeline that once transported gas for local producers, a supply which no longer exists. Columbia Gas avers there are no points of delivery from this section of Line 10, and that the section of Line 803 for which abandonment authority is requested, formerly provided service to CPA, but is no longer utilized for that purpose since CPA has a new supply to its market.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is

filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–21817 Filed 8–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–330–001]

Koch Gateway Pipeline Company; Notice of Compliance Filing

August 10, 1998.

Take notice that on August 5, 1998, Koch Gateway Pipeline Company (Koch) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1998:

Substitute Fourth Revised Sheet No. 2403
Second Revised Sheet No. 2502

Koch is submitting the above referenced tariff sheets in compliance with the Commission's Letter Order issued July 31, 1998, in the above captioned docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21825 Filed 8–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–329–001]

Mobile Bay Pipeline Company; Notice of Compliance Filing

August 10, 1998.

Take notice that on August 5, 1998, Mobile Bay Pipeline Company (Mobile Bay) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective August 1, 1998:

Substitute Second Revised Sheet No. 186A
Second Revised Sheet No. 274

Mobile Bay is submitting the above referenced tariff sheets in compliance with the Commission's Letter Order issued July 31, 1998, in the above captioned docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21824 Filed 8–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–707–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

August 10, 1998.

Take notice that on August 3, 1998, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP98–707–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the National Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new sales tap in Warren County, Pennsylvania under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to construct and operate a new sales tap, for delivery of approximately 4.305 Dth per day of gas with a maximum capacity of approximately 6,500 Dth per day to Columbia Gas of Pennsylvania, Inc. National Fuel states that the proposed sales tap would be located on its Line L. National Fuel estimates that the cost of construction would be $99,000, for which National Fuel will be reimbursed.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–21818 Filed 8–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Overthrust Pipeline Company; Notice of Tariff Filing

August 10, 1998.

Take notice that on August 5, 1998, Overthrust Pipeline Company (Overthrust) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1 and First Revised Volume No. 1–A, the following revised tariff sheets, to be effective September 4, 1998:

Original Volume No. 1

Fifth Revised Sheet No. 3
Second Revised Sheet No. 27
Second Revised Sheet No. 34

4First Revised Volume No. 1–A

Second Revised Sheet No. 2
First Revised Sheet No. 38

First Revised Sheet No. 64
First Revised Sheet No. 70A
First Revised Sheet No. 71

Overthrust states that the purpose of this filing is four fold. First, to revise the preliminary statement; second, to explain that Overthrust's standard calibration cycle is quarterly, rather than monthly; third, to provide for notification, via electronic means, of a force majeure condition on the pipeline and fourth, to make a technical correction in § 5.2 of the General Terms and Conditions of First Revised Volume No. 1–A of Overthrust's tariff.

Overthrust states further that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21820 Filed 8–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3526–000]

Shamrock Trading, LLC; Notice of Issuance of Order

August 10, 1998.

Shamrock Trading LLC (Shamrock) submitted for filing a rate schedule under which Shamrock will engage in wholesale electric power and energy transactions as a marketer. Shamrock also requested waiver of various Commission regulations. In particular, Shamrock requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Shamrock.

On August 7, 1998, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Shamrock should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Shamrock is authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Shamrock's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 8, 1998. Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 98–21847 Filed 8–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–696–000]

Texas Gas Transmission Corporation; Notice of Application

August 10, 1998.

Take notice that on July 27, 1998, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed an application in Docket No. CP98–696–000 pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon its North Elton System consisting of the North Elton 8″ Line, the North Elton-Daigle #1 4″ Line, the North Elton-Reese 4″ line, the North-LeDoux 3″ Line and the Stanolind Oil & Gas Corporation (Stanolind) Meter Station in Jefferson Davis and Allen Parishes Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Gas production to the North Elton Lines has been depleted for sometime; however, these lines could not be removed because of a contractual commitment to receive gas for ANR at the Stanolind Meter Station. On April 24, 1997, Texas Gas received approval in Docket No. CP97–288–000 to abandon the related transportation service for ANR, which was authorized in Docket No. G–10395. With the Abandonment of this transportation service, the facilities proposed to be abandoned herein are no longer needed.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 31, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214) and 385.211 and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or it the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Texas Gas to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–21819 Filed 8–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–208–003]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 10, 1998.

Take notice that on August 5, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of June 1, 1998:

Substitute Original Sheet No. 271A
Second Substitute Original Sheet Nos. 271B, 271C, and 271D

Williams states that it filed an Answer to Protests of the Kansas Corporation Commission and the Missouri Public Service Commission on July 10, 1998 (July 10 Answer). Included in that filing were informal tariff sheets which contained modifications to the reverse auction process that Williams was willing to make. By order issued July 30, 1998, the Commission accepted the compliance filing filed June 15, 1998, subject to the Williams filing the further modifications set forth in its July 10 Answer in proper tariff format within 5 business days after the order issued. The instant filing is being made to comply with the order.

Williams states that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21823 Filed 8–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention

August 10, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Declaration of Intention.

b. Docket No: DI98–1–000.

c. Date Filed: June 15, 1998.

d. Applicant: Bering Pacific Ranches Ltd.

e. Name of Project: Bering Pacific Ranch Mini Hydroelectric Project.

f. Location: Located on 33 Creek, near the abandoned Fort Glenn, Umnak Island, Alaska. The powerhouse is located approximately 3.5 miles from the confluence with the Pacific Ocean in section 30, T. 78 S., R. 128 W. The intake is located in section 25, T. 78 S., R. 129 W., Seward Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. Applicant Contact: Bruce Hubbard, President, Bering Pacific Ranches, Ltd, 403 First Ave., SE., High River, Alberta T1V 1H6, (403) 652–1386.

i. FERC Contact: Diane M. Murray, (202) 219–2682.

j. Comment Date: September 24, 1998.

k. Description of Project: The project consists of: (1) an existing small diversion structure about 4 feet high and 10 feet wide; (2) 9,005 feet or existing 10″ wood-stave pipe, 2,142 feet of existing 10″ steel pipe; (3) a proposed powerhouse containing a generator with a capacity of 54 kilowatts; and (4) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 98–21821 Filed 8–13–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL98–7–000]

Technical Conference on Year 2000 Issues for the Oil and Natural Gas Sector; Notice of Technical Conference

August 10, 1998.

Take notice that the Federal Energy Regulatory Commission (FERC) is sponsoring a technical conference to be held on Friday, September 18, 1998, at 9:00 a.m., 888 First Street, NE., Washington, DC 20426 in the Commission meeting room. This conference is being held as an outreach for the President's Council on Year 2000 Conversion's (Council). The Council has designated FERC as the lead agency for the oil and gas sector of its Energy Working Group. The conference will be hosted by the Natural Gas Council (NGC) and American Petroleum Institute (API). All interested persons are invited to attend.

This technical conference will focus on promoting awareness of Year 2000 (Y2K) issues and coordinating information sharing on testing and solutions among companies in the oil and natural gas industries rather than internal solutions of individual companies.

The industry associations that are part of the Council's oil and gas sector will present preliminary results of a Y2K readiness survey of the oil and natural gas industries. This survey was developed by the oil and gas sector of the Council's Energy Working Group, and will be repeated quarterly. The industry associations are distributing the survey to individual companies. The industry associations and umbrella organizations (such as NGC, API, and Gas Industry Standards Board) are compiling and aggregating survey results so that individual company responses remain anonymous. It is these aggregated results that will be presented at the conference. The Council's oil and gas sector group is also developing a Website that will be linked to the Council's Website (www.y2k.gov), where aggregated survey results and other related information will be posted and made available to the public.

A more detailed agenda will be published before the conference. The public may participate during question and answer periods, but no witness panels will be established. Written comments are welcome at any time and should reference Docket No. PL98–7–000. For additional information, please contact Kathleen Sherman at 202–219–2834 or by electronic mail at "kathleen.sherman@ferc.fed.us."

If there is sufficient interest from those outside the Washington, DC, metropolitan area, the Capitol Connection may broadcast the conference LIVE via satellite for a fee. If there is interest in the Washington, DC, area for this program or you need more information about the national broadcast, please call Shirley Al-Jarani or Julia Morelli at the Capitol Connection (703–993–3100) no later than September 15, 1998. In addition, National Narrowcast Network's Hearing-On-The-Line service covers all FERC meetings live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202–966–2211 for further details.

David P. Boergers,

Secretary.

[FR Doc. 98–21822 Filed 8–13–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5494–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed August 3, 1998 Through August 7, 1998

Pursuant to 40 CFR 1506.9

EIS No. 980301, Final Supplement, AFS, SD, Anchor Hill Mine Expansion Project in Gilt Edge Mine, Additional Information and Clarification, Plan-of-Operations, Approval Black Hills National Forest, SD, Due: September 14, 1998, Contact: Don Murray (605) 578–2744.

EIS No. 980302, Draft EIS, AFS, MI, Perkins-Manistique 138 kV Transmission Line Project, Wisconsin Electric/Edison Sault Electric, Construction and Operation, Application for a Special-Use-Permit, Hiawatha National Forest, Upper Peninsula, MI, Due: September 28, 1998, Contact: Patty Beyer (906) 228–9681.

EIS No. 980303, Revised Draft EIS, USN, GU, AK, AS, HI, Marianas Islands Military Training, Implementation, Continue Use of DOD-Controlled Lands, Proposed sites Tinian Military Lease Area, Guam Active Military Bases and Farallon de Medina (FDM) a Navy-Leased Island, HI, Due: September 28, 1998, Contact: Fred Minato (808) 471–9338.

EIS No. 980304, Final EIS, BLM, NV, Trenton Canyon Mining Project, Construction, Operation and Expansion, Plan of Operation, Valma and North Peak Deposits, Humboldt and Lander Counties, NV, Due: September 14, 1998, Contact: Rodney Herrick (702) 623–1500.

EIS No. 980305, Final EIS, FHW, NH, NH–111 in the Towns Windham and Salem Improvements, Funding, NPDES and COE Section 404 Permits, NH, Due: September 14, 1998, Contact: William F. O'Donnell, PE (603) 225–1608.

EIS No. 980306, Draft EIS, COE, CA, Hamilton Wetland Restoration Project, Tidal Salt Marsh Habitat, Alameda County, CA, Due: September 28, 1998, Contact: Eric Jolliffe (415) 977–8543.

EIS No. 980307, Final EIS, EPA, MS, FL, AL, Eastern Gulf of Mexico Offshore Oil and Gas Extraction, Issuance of National Pollutant Discharge Elimination System Permitting for Wastewater Discharge General Permit for Exploration and Development/ Production, MS, AL and FL, Due: September 14, 1998, Contact: Lena Scott (404) 562–9607.

EIS No. 980308, Draft EIS, AFS, CO, Arapahoe Basin Ski Area Master Development Plan, Construction and Operation, COE Section 404 Permit, White River National Forest, Dillon Ranger District, Summit County, CO, Due: September 28, 1998, Contact: Michael Liu (970) 468–5000.

EIS No. 980310, Final EIS, AFS, OR, Moose Subwatershed Timber Harvest and Other Vegetation Management Actions, Central Cascade Adaptive Management (CCAMA), Willamette National Forest, Sweet Home Ranger District, Linn County, OR, Due: September 14, 1998, Contact: Donna Short (541) 367–5168.

Amended Notices

EIS No. 920375, Draft EIS, AFS, OR, West Indigo Timber Sales and Other Projects Land and Resource Management Plan, Implementation, Siskiyou National Forest, Galice Ranger District, Curry County, OR, Due: November 9, 1992, Contact: William J. Gasow (503) 479–5301. Published FR 09–25–92—Officially Canceled by the Preparing Agency.

EIS No. 980182, Draft EIS, BLM, CA, Telephone Flat Geothermal Power Plant within the Glass Mountain Known Geothermal Resource Area, Construction, Operation and Decommissioning of a 48 megawatt

(MW) Geothermal Plant, Modoc National Forest, Siskiyou County, CA, Due: August 24, 1998, Contact: Randall Sharp (520) 233–8848.
Published FR 05–22–98—Review Period extended.
EIS No. 980218, Draft EIS, COE, AK, Beaufort Sea Oil and Gas Development Northstar Project, Implementation, NPDES Permit, Sea Island, Alaskan Beaufort Sea, Offshore Marine Environment and Onshore Northslope of Alaskan Coastal Plain, AK, Due: August 31, 1998, Contact: Ms. Terry Carpenter (907) 753–2712.
Published FR 06–12–98—Review Period Extended.

Dated: August 11, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–21940 Filed 8–13–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5494–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 13, 1998 Through July 17, 1998 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the OFFICE OF FEDERAL ACTIVITIES AT (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–DOE–E00007–SC Rating EC2, Tritium Extraction Facility (TEF), Construction and Operation near the Center of Savannah River Site at H Area, (DOE/EIS–0271D), Aiken and Barnwell Counties, SC.

Summary: EPA had environmental concerns about the project. The Final EIS should provide more information about emergency response plans for potential spills and accidents.

ERP No. D–NPS–E61073–MS Rating EC1, Natchez Trace Parkway, Construction of Section 3X Southern Terminus, Adam Counties, MS.

Summary: EPA had environmental concerns about adverse impacts to wetlands which should be avoided to fully protect the environment.

ERP No. D–UAF–J11012–00 Rating LO, Colorado Airspace Initiative, Modifications to the National Airspace System, such as the F–16 Aircraft and Aircrews of the 140th Wing of the Colorado Air National Guard, also existing Military Operations Areas (MOAs) and Military Training Routes (MTRs), CO, NM, KS, NB and WY.

Summary: EPA had no comments to the proposed action.

Final EISs

ERP No. F–AFS–L65299–AK, Cascade Point Access Road, Construction, Maintenance and Operation, Road Easement within National Forest System land in the vicinity of Echo Cove, EPA Permit, COE Section 10 and 404 Permits, Juneau, AK.

Summary: EPA continued to have objections to a Purpose and Need statement that results in the evaluation of a restricted range of alternatives, the potentially significant direct, indirect, and cumulative environmental impacts to Berners Bay, and the level of information/analyses presented in the EIS.

ERP No. F–USN–E11038–00, USS SEAWOLF Submarine Shock Testing, Implementation, located in the Offshore Mayport, FL or Norfolk, VA.

Summary: EPA continued to have some environmental concerns about the Seawolf testing and awaits with interest the outcome of additional, future tests.

Other

ERP No. LD–BLM–L61219–AK Rating LO, Squirrel River Wild and Scenic River Suitability Study, Designation and Non-Designation, National Wild and Scenic Rivers System, AK.

Summary: EPA used a screening tool to conduct a limited review of the action. Based upon the screen, EPA does not foresee having any environmental objections to the proposed project. EPA will not be conducting a detailed review.

Dated: August 11, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–21941 Filed 8–13–98; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00247; FRL–6021–1]

Cooperative Agreements to Develop and Carry Out Authorized State Training, Accreditation, and Certification Programs for Lead-Based Paint Professionals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of funds availability; solicitation of applications for financial assistance.

SUMMARY: This notice announces EPA's intent to enter into cooperative agreements with states, territories, Indian tribes, and the District of Columbia which provide financial assistance for purposes of developing and carrying out EPA-authorized training, accreditation and certification programs for professionals engaged in lead-based paint activities. In the past, recipients of the cooperative agreements have used the funds to assist in program development and prepare for program authorization. A number of states and tribes are making significant progress in developing authorizable programs and EPA would like to continue to support the development and authorization of these programs. These programs and this financial assistance are authorized by section 404 of the Toxic Substances Control Act (TSCA). This notice describes eligibility criteria, eligible activities, application procedures and requirements, and funding criteria. EPA anticipates that up to $12.5 million will be available during Federal fiscal year 1998 (FY 98) for awards to states, Indian tribes, territories, and the District of Columbia for the development, implementation and administration of EPA-authorized training, accreditation, and certification programs. This is the fifth year that funding is being made available for this cooperative agreement program. Subject to future budget limitations, EPA plans to provide this support on a continuing basis to eligible states, territories, Indian tribes and the District of Columbia. All cooperative agreements will be administered by the appropriate EPA Regional office.

DATES: In order to be considered for funding during the FY 98 award cycle, all applications must be received by the appropriate EPA Regional office on or before September 14, 1998. EPA will make its award decisions and execute its FY 99 cooperative agreements by September 30, 1998.

FOR FURTHER INFORMATION CONTACT: For general information, contact: Susan B.

Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551, e-mail: TSCA-Hotline@epamail.epa.gov. For technical information, contact the appropriate Regional Primary Lead Contact person listed in Unit VI. of this notice.

SUPPLEMENTARY INFORMATION: Section 404(g) of TSCA authorizes EPA to award non-matching cooperative agreements to states, territories, the District of Columbia and eligible Indian tribes to develop and carry out authorized programs to ensure that individuals engaged in lead-based paint activities are properly trained; that training programs are accredited; and that contractors engaged in such activities are certified.

Although EPA's goal is to have approved programs in all states, the District of Columbia, and a large number of territories and Indian tribes, the Agency and Congress anticipated that there will be a number of states, territories, and Indian tribes that will not seek program authorization. The Agency's FY 98 appropriation provides EPA with the authority to use FY 98 section 404(g) funds to directly implement a Federal program for non-authorized states, territories, Indian tribes, and the District of Columbia.

Pursuant to Title IV of TSCA, EPA encourages states, territories, the District of Columbia, and Indian tribes to seek authorization of their own training, accreditation, and certification programs for lead-based paint activities. EPA therefore recommends that parties seek funding through the TSCA Title IV section 404(g) assistance program, which is now being implemented to help achieve these ends. EPA further recommends that parties plan to utilize this cooperative agreement support in a way that complements any related financial assistance they may receive from other Federal sources. EPA will seek to ensure that all Federally-funded lead activities are undertaken in a coordinated fashion. In addition, recipients must comply with the requirements of 40 CFR 31.25 with respect to program income.

I. Eligibility

States, territories, the District of Columbia, and Indian tribes that meet the criteria at 40 CFR 745.330 are eligible to apply for financial assistance under this cooperative agreement program. However, awarding of funds will be based upon the progress in developing an approvable program, including implementing regulations. Failure to make satisfactory progress towards program authorization may result in a state, territory, Indian tribe or the District of Columbia not receiving funding. The EPA Regional offices will have sole discretion with respect to determining whether sufficient progress is being made by a given state, territory, Indian tribe and/or the District of Columbia towards the development and implementation of a program under TSCA Title IV.

In order for Indian tribes to be eligible for financial assistance under this program, the Indian tribes must demonstrate that they meet the criteria at 40 CFR 745.330. Pursuant to 40 CFR 735.330, as amended in 1998, the Administrator may treat a Tribe as eligible to apply for a TSCA section 404(g) grant if the Tribe:

(a) Is recognized by the Secretary of Interior.

(b) Has an existing government exercising substantial governmental duties and powers.

(c) Has adequate authority to carry out the grant activities.

(d) Is reasonably expected to be capable, in the Administrator's judgment, of administering the grant program.

If the Administrator has previously determined that an Indian tribe has met the prerequisites in § 745.330(a) and (b) for another EPA program, the Tribe need only provide that information unique to the TSCA 404(g) grant program required by § 745.330(d).

II. Authority

The "TSCA Title IV State Lead Cooperative Agreement Program" is a financial assistance program administered by EPA under the authority of section 404(g) of TSCA. Each of EPA's 10 Regional Administrators has been delegated the authority to enter into cooperative agreements with eligible states, territories, Indian tribes, and the District of Columbia.

III. Activities to be Funded

Over the past 4 years, EPA has provided financial assistance to the states, territories, Indian tribes, and the District of Columbia aimed at the development, implementation, and enforcement of authorized programs as outlined under the Final Lead 402/404 rule. The primary focus of the FY 99 cooperative agreements will be on the implementation, administration, and enforcement of approved programs. However, states, territories, the District of Columbia, and Indian tribes that do not have authorized programs may still receive cooperative agreements for the continued development of lead-based paint certification and accreditation programs.

Examples of eligible activities include: maintain, improve and/or develop the appropriate infrastructure to administer and enforce a program; oversee accredited training programs; implement a compliance assistance program; and implement the timely training of enforcement inspectors. The "State, Territory, District of Columbia and Tribal Cooperative Agreement Guidance for FY 1998" (Guidance) issued by the Agency in December of 1997 and revised in July of 1998, provides a list of eligible activities organized by funding priority. Copies of the Guidance may be obtained by contacting the appropriate Regional Primary Lead Contact person listed in Unit IV. of this Notice. Although the list in the final Guidance is not exhaustive, the Agency will place more emphasis on the items marked high priority.

IV. Allocation of Funds

The allocation of funds process has been designed to transfer the funds from the EPA Headquarters Office to the EPA Regional Offices. EPA Regional Offices will have discretion in the distribution of the TSCA section 404(g) funds outlined in this notice.

For the FY 98 funding cycle, $100,000 of funds will be set aside for each of the 10 EPA Regional offices (total $1.0 million). These funds are primarily intended to provide each Region with the means of awarding funds to states, territories, Indian tribes and/or the District of Columbia based upon program progress and quality. The Regional offices will also have the discretion to use these dollars for the direct implementation of the Federal program within the Region.

For FY 98 funding, EPA is allocating up to $1.5 million for Indian Tribes who have either received authorization for a Tribal lead-based paint activities program or have made substantial progress towards the development of a lead-based paint activities program. EPA expects to issue an additional Notice of Funds Availability for Indian Tribes who are in the initial developmental stages of a lead-based paint activities program. Tribes that have received grants in previous years and receive funding under this notice will not be eligible to receive funding under the subsequent notice.

Each Indian tribe that submits a qualifying proposal and is making sufficient progress towards implementation of an approvable training, accreditation, and certification

program will be entitled to a base funding level of $50,000 with the exception of the Navajo and Cherokee Nations which are entitled to a base funding level of $75,000. Eligible Indian tribes may also apply for funding above the base level. Distribution of the Indian tribe funds above the base funding level will be dependent upon the number of qualified applicants, program progress, tribal population, and other factors as appropriate. Any of the Indian funds remaining after the awarding of cooperative agreements to qualified Indian tribes will be included in the formula pool.

The Agency will use a two-tiered system to calculate how the remaining $10.0 million of cooperative agreement funds will be distributed to the Regional Offices for subsequent distribution to eligible state, territory, and the District of Columbia applicants (and for direct implementation by the EPA Regional offices where appropriate). This system is aimed at providing a base funding level for each qualified applicant (and for direct implementation by the EPA Regional offices where appropriate), while at the same time, targeting areas with the greatest potential lead hazard and risk. It accomplishes this by providing for a tier-one distribution of base funding, followed by a tier-two distribution of formula funding, based upon the relative lead burden estimated to exist within a state, territory, and the District of Columbia.

Each state and the District of Columbia that submits a qualifying proposal to the Regions and is making sufficient progress towards implementation of an approvable training, accreditation, and certification program will receive a base funding allotment of $100,000. Each territory that submits a qualifying proposal to the Region and is making sufficient progress towards implementation of an approvable training, accreditation, and certification program will receive a $50,000 base. For FY 98 funding, each EPA Regional office will receive a base level funding of $25,000 for direct implementation of a Federal program for each state, the District of Columbia, the Commonwealth of Puerto Rico, Virgin Islands, Guam, and America Samoa within the Region which does not submit an application and/or receive a cooperative agreement under this funding program. Any unsubscribed base funding will be added to the formula funds pool.

States, territories, and the District of Columbia with funding requests exceeding their base allotments can be given apportioned additional sums ("formula funds") based upon their relative lead burden and the progress they have made toward establishing a training, certification, and accreditation program. All 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Virgin Islands, Guam, and America Samoa will be used to calculate the formula distribution; funds will then be transferred to the Regions for distribution. Formula funds for states, territories, and the District of Columbia which are not funded under this cooperative agreement program will be distributed to the appropriate Regional office for use in the direct implementation, administration, and enforcement of the Federal program.

In calculating the lead burden for the formula rankings, EPA will use readily available data derived from the 1990 Census of Population and Housing, together with other data from the U.S. Department of Housing and Urban Development (HUD). The formula uses four factors to generate an estimate of the potential lead problem, or "lead burden," in each state, territory, and the District of Columbia. Two of these factors, the number of housing units with lead-based paint and the number of children under age 6, express the potential magnitude of the lead problem. The remaining two factors, the fraction of young children in poverty and the fraction of low-income housing units with lead-based paint, express the potential severity of the problem.

In determining formula rankings, each state, territory, and the District of Columbia is scored independently for each factor, and the four individual factor scores for the state, territory, or the District of Columbia are then summed to obtain an overall score for that applicant (a combined factor score). The combined factor scores of all states, territories, or the District of Columbia applying for formula funds are then summed, and the percentage of the total sum represented by each applicant's score is then identified. When the total formula funding available is then multiplied by the applicant's percentage score, the applicant's formula allotment can be obtained.

After funding levels (base and formula) are determined for each state, territory, Indian tribe, and the District of Columbia, the funds will be pooled for each Region and transferred in bulk to the respective Regional accounts. The Regions will be responsible for awarding the cooperative agreements. The Regions will exercise discretion in distributing funds based upon progress made towards implementation of the TSCA sections 402/404 programs, including the focus on high program priorities listed in the FY 98 Guidance. EPA Regions will have the discretion in their evaluation of how well an applicant applies and meets the criteria, such as program progress, outlined in this notice.

V. Submission Requirements

To be considered for funding, each application must include, at a minimum, the following forms and certifications which are contained in EPA's "Application Kit for Assistance": (1) Standard Form 424 (Application for Federal Assistance), (2) EPA Form 5700–48 (Procurement Certification), (3) Drug-Free Workplace Certification, (4) Debarment and Suspension Certification, (5) Disclosure of Lobbying Activities, and (6) a return mailing address. In addition to these standard forms, each application must also include a work plan, a detailed line-item budget with sufficient information to clearly justify costs, a list of work products or deliverables, and a schedule for their completion of the work plan.

Work plans are to be negotiated between applicants and their EPA Regional offices to ensure that priorities are adequately addressed. Any application from a state, territory, Indian tribe, or the District of Columbia that is not making sufficient progress towards implementation of an approvable training, accreditation and certification program may not be accepted. Also, any applicant proposing the collection of environmentally-related measurements or data generation must adequately address the requirements of 40 CFR 31.45 relating to quality assurance/quality control. These requirements are more specifically outlined in the "Guidance Document for the Preparation of Quality Assurance Project Plans" (May 1993) published by EPA's Office of Pollution Prevention and Toxics. This document, as well as the application kits referred to above, may be obtained from EPA's Regional offices.

VI. Application Procedures and Schedule

Applications must be submitted to the appropriate EPA Regional office in duplicate; one copy to the Regional lead program branch and the other to the Regional grants management branch. Early consultations are recommended between prospective applicants and their EPA Regional offices. Because TSCA Title IV cooperative agreements will be administered at the Regional level, these consultations can be critical to the ultimate success of the project or program. After the formula funding calculations are determined and the funds are transferred to the appropriate

EPA Regional account, the Regional Primary Lead Contact person will contact the applicant and discuss the final award. EPA Regional Offices may require the applicant to modify its proposed work plan and cooperative agreement based upon the final funding level of the cooperative agreement.

EPA reserves the right, in negotiating the cooperative agreement, to delete budget items that, in its judgement, are not necessary for the direct support of program purposes, and to request the applicant to redirect the deleted sums to other acceptable purposes or make a corresponding reduction in the cooperative agreement request.

The cooperative agreement shall be used solely for the purpose described in the applicant's approved implementation plan and the budget, including any changes that may be negotiated and adopted in the cooperative agreement.

For more information about this financial assistance program, or for technical assistance in preparing an application for funding, interested parties should contact the Regional Primary Lead Contact person in the appropriate EPA Regional office. The mailing addresses and contact telephone numbers for these offices are listed below.

Region I: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont), JFK Federal Building, One Congress St., Boston, MA 02203. Telephone: (617) 565-3836 (Jim Bryson)

Region II: (New Jersey, New York, Puerto Rico, and the Virgin Islands), Building 5, SDPTSB, 2890 Woodbridge Ave., Edison, NJ 08837-3679. Telephone: (908) 321-6671 (Lou Bevilacqua)

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia), 841 Chestnut Bldg., Philadelphia, PA 19107. Telephone: (215) 566-2084 (Gerallyn Valls)

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), 61 Forsyth St., SW., Atlanta, GA 30303. Telephone: (404) 562-8998 (Rose Anne Rudd)

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin), DRT-8J, 77 W. Jackson St., Chicago, IL 60604. Telephone: (312) 886-7836 (David Turpin)

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas), 12th Floor, 1445 Ross Ave., Dallas, TX 75202. Telephone: (214) 665-7577 (Jeff Robinson)

Region VII: (Iowa, Kansas, Missouri, and Nebraska), ARTD/RENV, 726 Minnesota Ave., Kansas City, KS 66101. Telephone: (913) 551-7518 (Mazzie Talley)

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming), 999 18th St., Suite 500, Denver, CO 80202. Telephone: (303) 312-6021 (David Combs)

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, and Guam), 75 Hawthorne St., San Francisco, CA 94105. Telephone: (415) 744-1094 (Harold Rush)

Region X: (Alaska, Idaho, Oregon, and Washington), Solid Waste and Toxics Unit (WCM-128), 1200 Sixth Ave., Seattle, WA 98101. Telephone: (206) 553-1985 (Barbara Ross)

The deadline for EPA's receipt of final FY 98 applications is September 14, 1998. Once the application deadline has passed, EPA will process the formula funding calculations and determine the initial formula ceiling allocations.

List of Subjects

Environmental protection, Grants, Lead, Training, and Accreditation.

Dated: August 10, 1998.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 98–21931 Filed 8–13–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–824; FRL–6023–2]

American Cyanamid Company; Pesticide Tolerance Petition Filing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by the docket control number PF–824, must be received on or before September 14, 1998.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Marion J. Johnson, product Manager 2, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 208, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6788; e-mail: johnson.marion@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–824] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in

"ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–824) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:August 6, 1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

American Cyanamid Company

PP 2F2609

EPA has received a pesticide petition (PP 2F2609) from American Cyanamid Company, P. O. Box 400, Princeton, NJ 08543-0400 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of [tetrahydro-5,5-dimethyl-2(1H)-pyrimidinone[3-4-(trifluoromethyl)phenyl]-1-[2-[4-(trifluoromethyl)phenyl]ethenyl]-2-propenylidene]hydrazone, hydramethylnon] in or on the raw agricultural commodity pineapples at 0.05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Metabolism studies were conducted on grass and pineapples utilizing two distinct ^{14}C-radiolabeled forms of hydramethylnon. Based on these studies, the qualitative nature of the residues of hydramethylnon in plants is understood and the parent molecule is considered to be the only residue of concern.

2. *Analytical method.* Adequate enforcement methodology is available in PAM II (Method I) to enforce the tolerance expression. A confirmatory method has recently been submitted to the FDA for inclusion in PAM II.

3. *Magnitude of residues.* Based on the results of seven pineapple field trials, including two studies conducted at 5x the maximum application rate, residues of hydramethylnon are not expected to exceed 0.05 ppm in/on pineapples. Processing studies have demonstrated that residues are not expected to concentrate in pineapple processed commodities. The Agency has previously established a time-limited tolerance at this level to cover residues that may occur as a result of use under section 18 emergency authorizations issued to the State of Hawaii. Secondary residues of hydramethylnon are not expected in animal commodities and no tolerances for secondary residues of hydramethylnon in livestock commodities are currently established.

B. Toxicological Profile

1. *Acute toxicity.* Based on the results of the acute toxicity data, hydramethylnon does not exhibit significant acute toxicity. For the acute oral study in rats, the LD_{50} in males was 817 mg/kg and the LD_{50} in females was 1,502 mg/kg. The LD_{50} for the acute dermal study in rabbits was greater than 2,000 mg/kg and the 4-hour LC_{50} for acute inhalation in rats was 2.9 mg/l (males and females combined). Hydramethylnon is not a dermal irritant or a skin sensitizer and is a mild eye irritant.

2. *Genotoxicty.* The following genotoxicity tests were all negative: *Salmonella typhimurium/Escherichia coli* reverse gene mutation assay, Schizosaccharomyces pombe P1 forward gene mutation assay, *in vitro* Chinese Hamster Ovary (CHO) chromosome aberration, Saccharomyces cerevisiae D4 mitotic gene conversion assay. The data suggest that hydramethylnon is not genotoxic in microbial test systems or clastogenic in cultured mammalian cells and does not induce dominant lethality in male rat germinal cells. The evidence of male infertility and testicular atrophy at 90 mg/kg/day in the dominant lethal assay is consistent with similar findings observed in the chronic rat study, the 18-month mouse feeding study, the 2-generation reproduction study, and the 91-day oral gavage study in dogs.

3. *Reproductive and developmental toxicity.* There is no evidence in the prenatal developmental toxicity studies in either rats or rabbits of alterations to CNS development, nor is there any indication of neurotoxicity in the other short or long-term oral studies in rats, mice or dogs. No evidence of the increased sensitivity of the developing offspring was noted as the no-observed effected levels (NOELs) for developmental toxicity in the rat (10 milligrams/kilogram/body weight/day (mg/kg/bwt/day) and the rabbit 5 mg/kg/bwt/day were greater than the NOELs for maternal toxicity 3 mg/kg/bwt/day for the rat and < 5 mg/kg/bwt/day for the rabbit). Hydramethylnon is not teratogenic in either the rat or rabbit. Hydramethylnon is a male reproductive toxicant which appears to specifically target the germinal cells and/or tissues in the testes. In a 2-generation rat reproduction study, there was no evidence of systemic toxicity, nor was there any evidence of direct toxicity in the offspring. The reproductive NOEL was 25 ppm (1.66 mg/kg/day for males) and the lowest observed effect level (LOEL) was 50 ppm (3.32 mg/kg/day for males), based upon histopathological findings in the testes and the epididymides. Also, at 75 ppm (5.05 mg/kg/day in males), reproductive performance of the males was decreased with longer precoital intervals, lower pregnancy rates, reduced gestation weight gain for females and smaller litters.

4. *Subchronic toxicity.* The following are the results of the subchronic toxicity tests that have been conducted with hydramethylnon: 91-day feeding study in rats (NOEL 2.5 mg/kg/bwt/day); 91-day gavage study in dogs (NOEL < 3 mg/kg/bwt/day); 21-day dermal study in rabbits (NOEL 250 mg/kg bwt/day). For both the short- and intermediate-term margin of exposure (MOE) calculations, the Agency's Hazard Identification Committee recommended use of the systemic NOEL (freestanding) of 250 (mg/kg/day) from the 21-day dermal toxicity study in New Zealand white rabbits. Non-adverse signs at the NOEL

included decreased food consumption in males and females, and thrombocytopenia in females.

5. *Chronic toxicity.* The EPA has established the Reference Dose (Rfd) for hydramethylnon at 0.01 mg/kg/day. This RfD is based on a 6-month feeding study in dogs with a NOEL of 1.0 mg/kg/day based on an increased incidence of soft stools, mucoid stools, and diarrhea at the LOEL of 3.0 mg/kg/day. An uncertainty factor of 100 was used during calculation of the RfD. Based on a statistically significant increase in lung adenomas and combined lung adenomas/carcinomas in female mice, hydramethylnon has been classified as a Group C chemical (possible human carcinogen) by the Agency's Cancer Peer Review Committee. The Committee recommended using the RfD approach for risk assessment.

6. *Animal metabolism.* Adequate rat and goat metabolism studies are available for hydramethylnon. Results of ruminant metabolism and feeding studies clearly demonstrate that there is no reasonable expectation that residues of hydramethylnon in pineapple processed commodities will be transferred to milk or edible tissues. Hence, no tolerances on any food items derived from ruminants are required for hydramethylnon.

7. *Metabolite toxicology.* The parent molecule is the only moiety of toxicological significance which needs regulation in plant commodities.

8. *Endocrine disruption.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect". The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At the present time, no reliable information is available to indicate that hydramethylnon has a potential to have an effect in humans that is similar to effects produced by naturally occurring estrogen or other endocrine substances.

C. Aggregate Exposure

1. *Dietary exposure.* A 0.05 ppm tolerance for the residues of hydramethylnon has only been established for grasses and as there is no reasonable expectation that residues in grass will be transferred to the milk and edible tissues of ruminants, no tolerances for hydramethylnon have been established on any food items. Thus, there is no contribution to the aggregate exposure of hydramethylnon residues from dietary sources. Therefore, the following risk assessment to assess dietary exposures and risks from hydramethylnon will be based on dietary exposures resulting from only the pending tolerance in/on pineapples.

2. *Food*—i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. The acute dietary (food only) risk assessment is not required as the Agency's Hazard Identification Committee did not identify any acute dietary risk endpoints.

ii. *Chronic exposure and risk.* In response to EPA's granting of an emergency exemption under FIFRA section 18 authorizing the use of hydramethylnon in pineapples in Hawaii, a time-limited tolerance of 0.05 ppm was established in/on pineapple fruits. The Agency has conducted a chronic dietary risk assessment based on very conservative assumptions -- 100% of pineapple commodities will contain hydramethylnon residues and those residues will be at the level of the required tolerance -- which results in an overestimate of human dietary exposure. Thus, in making a safety determination for this time-limited tolerance, HED has taken into account this conservative exposure assessment. Based on similar considerations, the pending hydramethylnon tolerance in/on pineapples results in a TMRC that is equivalent to the following percentages of the RfD of 0.01 mg/kg/day:

Population Subgroup	%RfD
U.S. Population	<0.1%
Nursing Infants	<0.1%
Non-Nursing Infants (<1 year old)	0.2%
Children (1-6 years old)	0.1%
Children (7-12 years old)	<0.1%

The subgroups listed above are: (i) the U.S. population (48 States); (ii) those for infants and children; and, (iii) the other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 States).

3. *Drinking water.* Based on its physical and chemical properties, (extremely low water solubility of 7-9 ppb at 25 °C and rapid aqueous photolysis with a ½ of less than 1 hour), there is no concern for exposure to residues of hydramethylnon in potable water. Hydramethylnon is also immobile in soil and does not leach because it is strongly adsorbed to all common soil types; thus hydramethylnon and its degradates are not expected to leach to groundwater. There are no established Maximum Contaminant Levels (MCLs) for residues of hydramethylnon in drinking water and no health advisory levels for this active ingredient in drinking water have been issued. Because the Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water risk assessment for many pesticides, EPA has commenced and nearly completed a process to identify a reasonable yet conservative bounding figure for the potential contribution of water-related exposure to the aggregate risk posed by a pesticide. In developing the bounding figure, EPA estimated residue levels in water for a number of specific pesticides using various data sources. The Agency then applied the estimated residue levels, in conjunction with appropriate toxicological endpoints (RfD's or acute dietary NOEL's) and assumptions about body weight and consumption, to calculate, for each pesticide, the increment of aggregate risk contributed by consumption of contaminated water. While EPA has not yet pinpointed the appropriate bounding figure for exposure from contaminated water, the ranges the Agency is continuing to examine are all below the level that would cause hydramethylnon to exceed the RfD if the tolerance being considered in this document were granted. The potential exposures associated with hydramethylnon in water, even at the higher levels the Agency is considering as a conservative upper bound, would be negligible and there is a reasonable certainty of no harm if the pending tolerance is granted.

4. *Non-dietary exposure.* Hydramethylnon is currently registered for use on the following residential non-food sites: recreational areas, ornamental plants, lawns, turf, and household or domestic dwellings. However as the vapor pressure of hydramethylnon is less than 2×10^{-8} mm of Hg at 35 and 45 °C, the potential for non-occupational exposure by inhalation is insignificant. Moreover, based on the current and proposed use patterns, chronic exposure is not likely. Although there may be short- and intermediate-term non-occupational dermal exposure scenarios, dermal absorption studies conducted with the

2% gel formulation indicate that less than 1% of the dose is dermally absorbed after 10-hours. In addition, the Agency has reviewed risk assessments and accepted the existence of more than adequate margins of exposure ((MOE) of 658 for both commercial and homeowner applicators and MOEs of >540 for post-application homeowner exposures) for other hydramethylnon-based products, containing up to 2% active ingredient. Thus, this new use pattern does not present any incremental risk of exposure to hydramethylnon residues.

D. Cumulative Effects

To the best of our knowledge, hydramethylnon is the only registered pesticide which belongs to a unique chemical class, the pyrimidinones (amidinohydrazones). Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, hydramethylnon does not appear to produce a toxic metabolite produced by other substances. Therefore, the potential for cumulative effects of hydramethylnon and other chemicals having a common mechanism of toxicity should not be of concern and for the purposes of this tolerance action, it is assumed that hydramethylnon does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*— i. *Acute risk* . An acute endpoint has not been identified. The Agency's Hazard Identification Committee determined that this risk assessment is not required.

ii. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to hydramethylnon from food will utilize <1% of the RfD of 0.01 mg/kg/day for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. In view of the negligible potential for exposure to hydramethylnon in drinking water and from non-dietary, non-occupational exposure, the aggregate exposure is not expected to exceed 100% of the RfD. EPA has concluded that there is a reasonable certainty that no harm will result from aggregate exposure to hydramethylnon residues. According to Agency policy, the residential uses of hydramethylnon do not fall under a chronic exposure scenario. Thus, it can be concluded that there is a reasonable certainty that no harm will result from chronic aggregate exposure to hydramethylnon residues.

iii. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Although hydramethylnon has residential uses, this new use pattern does not present any incremental risk of exposure to hydramethylnon residues. As discussed previously in section C. 4., the vapor pressure of hydramethylnon is less than 2×10^{-8} mm of Hg at 35 and 45 °C; thus, the potential for non-occupational exposure by inhalation is insignificant. Moreover, based on the physical and chemical properties of hydramethylnon, exposure from drinking water is not likely. Although there may be short- and intermediate-term occupational and non-occupational dermal exposures, the Agency has reviewed risk assessments and accepted the existence of more than adequate (MOEs of 658 for both commercial and homeowner applicators and MOEs of >540 for post-application homeowner exposures) for other hydramethylnon-based products, containing up to 2% active ingredient. Thus, as in the case for chronic exposure scenarios, it can be concluded that there is a reasonable certainty that no harm will result from short and intermediate-term exposures to hydramethylnon residues.

2. *Infants and children*—i. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to hydramethylnon from food will utilize only 0.2% of the RfD of 0.01 mg/kg/day for non-nursing infants <1 year old.

ii. *Safety factor for infants and children*— a. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of hydramethylnon, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. EPA has concluded that the toxicological database for hydramethylnon is adequate and does not indicate an increased sensitivity of perinatal animals to pre- and/or post natal exposures. Therefore, no additional uncertainty factor for protection of infants and children are warranted for hydramethylnon.

b. *Developmental toxicity studies.* In the rat developmental toxicity study, the developmental NOEL was 10 mg/kg/bwt/day with a NOEL for maternal toxicity of 3.0 mg/kg/bwt/day. In the rabbit developmental toxicity study the developmental NOEL was 5 mg/kg/bw/day with a NOEL for maternal toxicity of less than 5 mg/kg bwt/day.

c. *Reproductive toxicity study.* A 2-generation reproduction study with hydramethylnon was conducted in rats. The data support a NOEL for reproductive toxicity of 50 ppm (4.2 mg/kg/bwt/day), while the NOEL for paternal toxicity was 25 ppm (2.1 mg/kg/bwt/day). No adverse effects were observed in the pups.

These values are significantly higher than the NOEL used to calculate the RfD for the general U.S. population which is 0.01 mg/kg/bwt/day. These results demonstrate that there is a reasonable certainty that no harm will result to infants or children from aggregate exposure to hydramethylnon.

F. International Tolerances

There are no Codex, Canadian or Mexican residue limits established for hydramethylnon in/on pineapple. Thus, harmonization is not an issue for this petition.

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ENVIRONMENTAL PROTECTION AGENCY

[PF–822; FRL–6019–8]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–822, must be received on or before September 14, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be

claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Mark Dow	Rm. 214, CM #2, 703–305–5533, e-mail:dow.mark@epamail.epa.gov.	1921 Jefferson Davis Highway, Arlington, VA
Bipin Gandhi (PM 22)	Rm. 707A, CM #2, 703–308–8380, e-mail:gandhi.bipin@epamail.epa.gov.	1921 Jefferson Davis Highway, Arlington, VA

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–822] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated:August 5,1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Bayer Corporation

PP 4F4330

EPA has received a pesticide petition (PP 4F4330) from Bayer Corporation, 8400 Hawthorn Road, PO Box 4913, Kansas City MO, 64120-2000 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of cyfluthrin, (Cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodity potato at 0.01 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cyfluthrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabeled cyfluthrin in various crops all showing similar results. The residue of concern is cyfluthrin.

2. *Analytical method.* Adequate analytical methodology (gas/liquid chromatography with an electron capture detector) is available for enforcement purposes.

3. *Magnitude of residues.* Cyfluthrin is the active ingredient in the registered end-use product Baythroid 2 Emulsifiable Pyrethroid Insecticide, EPA Reg. No. 3125-351. Data to support the proposed tolerances have been submitted to the Agency.

B. Toxicological Profile

The database for cyfluthrin is current and complete. Toxicology data cited in support of these tolerances include:

1. *Acute toxicity.* There is a battery of acute toxicity studies for cyfluthrin supporting an overall toxicity Category II for the active ingredient.

2. *Genotoxicty.* Mutagenicity tests were conducted, including several gene mutation assays (reverse mutation and recombination assays in bacteria and a Chinese hamster ovary(CHO)/HGPRT assay); a structural chromosome aberration assay (CHO/sister chromatid exchange assay); and an unscheduled DNA synthesis assay in rat hepatocytes. All tests were negative for genotoxicity.

3. *Reproductive and developmental toxicity.* An oral developmental toxicity study in rats with a maternal and fetal NOEL of 10 milligram/ kilograms/body weight/day (mg/kg/bw/day) (highest dose tested (HDT)).

An oral developmental toxicity study in rabbits with a maternal NOEL of 20 mg/kg bw/day and a maternal lowest effect level (LEL) of 60 mg/kg bw/day, based on decreased body weight gain

and decreased food consumption during the dosing period. A fetal NOEL of 20 mg/kg bw/day and a fetal LEL of 60 mg/kg bw/day were also observed in this study. The LEL was based on increased resorptions and increased postimplantation loss.

A 3-generation reproduction study in rats with systemic toxicity NOELs of 7.5 and 2.5 mg/kgbw/day for parental animals and their offspring, respectively. At HDTs, the body weights of parental animals and their offspring were reduced.

4. *Subchronic toxicity.* A subchronic toxicity feeding study using rats demonstrated a NOEL of 22.5 mg/kg bw/day, the HDT.

A 6-month toxicity feeding study in dogs established a NOEL of 5 mg/kg bw/day. The LEL was 15 mg/kg bw/day based on clinical signs and reduced thymus weights.

5. *Chronic toxicity.* A 12-month chronic feeding study in dogs established a NOEL of 4 mg/kg bw/day. The LEL for this study is established at 16 mg/kg bw/day, based on slight ataxia, increased vomiting, diarrhea and decreased body weight.

A 24-month chronic feeding/carcinogenicity study in rats demonstrated a NOEL of 2.5 mg/kg bw/day and LEL of 6.2 mg/kg bw/day, based on decreased body weights in males, decreased food consumption in males, and inflammatory foci in the kidneys in females.

A 24-month carcinogenicity study in mice was conducted. Under the conditions of the study there were no carcinogenic effects observed. A 24-month chronic feeding/carcinogenicity study in rats was conducted. There were no carcinogenic effects observed under the conditions of the study.

6. *Animal metabolism.* A metabolism study in rats showed that cyfluthrin is rapidly absorbed and excreted, mostly as conjugated metabolites in the urine, within 48 hours. An enterohepatic circulation was observed.

7. *Metabolite toxicology.* No toxicology data have been required for cyfluthrin metabolites. The residue of concern is cyfluthrin.

8. *Endocrine disruption.* No evidence of endocrine effects was observed in any of the studies conducted with cyfluthrin, thus, there is no indication at this time that cyfluthrin causes endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure—Food.* Dietary exposure was estimated using Novigen's Dietary Exposure Evaluation Model (DEEMä) software; results from field trial and processing studies; consumption data from the USDA Continuing Surveys of Food Intake by Individuals (CSFIIs), conducted from 1989 through 1992; and information on the percentages of the crop treated with cyfluthrin.

Cyfluthrin is currently registered for use in alfalfa, citrus, sweet corn, cotton, sorghum, sunflower, sugarcane, carrots, peppers, radishes and tomatoes. In addition, it has an import tolerance for hops. Various formulations are registered for use in food handling establishments and in combination with another active ingredient, for use in field corn, pop corn and sweet corn.

Considering all current registered uses with the addition of potatoes, chronic dietary exposure estimates for the overall U.S. population were 0.8% of the RfD (0.008 mg/kg bw/day). For the most highly exposed population subgroup, children 1 to 6 years of age non-nursing infants (<1 year), the exposure was estimated to be 0.000153 mg/kg bw/day, or 1.9% of the RfD.

Acute dietary exposures were estimated for the overall U.S. population, females 13-years and older, children, ages 1-6 and 7-12 years, infants, non-nursing and nursing. The exposure was compared to the NOEL of 20 mg/kg bw/day to estimate the Margins of Exposures (MOEs).

For the overall U.S. population the 95th, 99th and 99.9th percentile of exposure the MOEs were calaculated as 11,751; 6,882; and 4,439 respectively.

For women aged 13-years and older the 95th, 99th and 99.9th percentile of exposure the MOEs were calculcated as 19,719; 13,147 and 7,165 respectively.

Lastly, for the potentially highest exposed population subgroup, non-nursing infants, the 95th, 99th and 99.9th percentile of exposure to the MOEs were calculated at 6,201; 4,595; and 2,933, respectively.

2. *Drinking water.* Cyfluthrin is immobile in soil, therefore, will not leach into groundwater. Additionally, due the insolubility and lipophilic nature of cyfluthrin, any residues in surface water will rapidly and tightly bind to soil particles and remain with sediment, therefore not contributing to potential dietary exposure from drinking water.

A screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at 2 meters are essentially zero (<0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using Standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 52 parts per trillion (ppt). Concentration in actual drinking water would be much lower. Based on these analyses, the contribution of water to the dietary risk estimate is negligible.

3. *Non-dietary exposure.* Non-occupational exposure to cyfluthrin may occur as a result of inhalation or contact from indoor residential, indoor commercial, and outdoor residential uses. Pursuant to the requirements of FIFRA as amended by the Food Quality Protection Act (FQPA) of 1996 non-dietary and aggregate risk analyses for cyfluthrin were conducted. The analyses include evaluation of potential non-dietary acute application and post-application exposures. Non-occupational, non-dietary exposure was assessed based on the assumption that a flea infestation control scenario represents a "worst case" scenario. For the flea control infestation scenario indoor fogger, and professional residential turf same day treatments were included for cyfluthrin. Deterministic (point values) were used to present a worse case upper-bound estimate of non-dietary exposure. The non-dietary exposure estimates were expressed as systemic absorbed doses for a summation of inhalation, dermal, and incidental ingestion exposures. These worst-case non-dietary exposures were aggregated with chronic dietary exposures to evaluate potential health risks that might be associated with cyfluthrin products. The chronic dietary exposures were expressed as an oral absorbed dose to combine with the non-dietary systemic absorbed doses for comparison to a systemic absorbed dose no-observed-effect-level (NOEL). Results for each potential exposed subpopulation (of adults, children 1-6 years, and infants <1 year) were compared to the systemic absorbed dose NOEL for cyfluthrin to provide estimates of MOE.

The large MOEs for cyfluthrin clearly demonstrate a substantial degree of safety. The total non-dietary MOEs are 3,800, 2,600, and 2,400 for adults, children (1-6 years), and infants (<1 year), respectively. When chronic dietary exposure is aggregated with non-dietary exposure, the aggregate MOE for adults is relatively unchanged approximately 3,800 and the MOEs for infants and children exceed 2,400.

The non-dietary methods used in the analyses can be characterized as highly conservative. This is due to the conservatism inherent in the calculation procedures and input assumptions. An

example of this is the conservatism inherent in the jazzercise methodology over representation of residential post-application exposures. It is important to acknowledge that these MOEs are likely to significantly underestimate actual MOEs due to a variety of conservative assumptions and biases inherent in the derivatization of exposure by this method. Therefore, it can be concluded that large MOEs associated with potential non-dietary and aggregate exposures to cyfluthrin will result in little or no health risks to exposed persons. The aggregate risk analysis demonstrates compliance with the health-based requirements of the FQPA of 1996 and supports the continued registration and use of residential, commercial, and agricultural products containing cyfluthrin.

D. Cumulative Effects

Bayer will submit information for EPA to consider concerning potential cumulative effects of cyfluthrin consistent with the schedule established by EPA at 62 FR 42020 (August 4, 1997) and other EPA publications pursuant to the FQPA.

E. Safety Determination

1. *U.S. population.* Based on the exposure assessments described above and on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to cyfluthrin from all uses will utilize less than 2% of the RfD for chronic dietary exposures and that margins of exposure in excess of 1,000 exist for aggregate exposure to cyfluthrin for non-occupational exposure. EPA generally has no concerns for exposures below 100% of the RfD, because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. MOE 100 or more (300 for infants and children) also indicate an adequate degree of safety. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to cyfluthrin residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of cyfluthrin, the data from developmental studies in both rat and rabbit and a 2-generation reproduction study in the rat can be considered. The developmental toxicity studies evaluate any potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development. The reproduction study evaluates any effects from exposure to the pesticide on the reproductive capability of mating animals through 2-generations, as well as any observed systemic toxicity.

The toxicology data which support these tolerances include: toxicity study in rats with a maternal and fetal NOEL of 10 mg/kg bw/day (HDT).

An oral developmental toxicity study in rabbits with a maternal NOEL of 20 mg/kg bw/day and a maternal LEL of 60 mg/kg bw/day, based on decreased body weight gain and decreased food consumption during the dosing period. A fetal NOEL of 20 mg/kg bw/day and a fetal LEL of 60 mg/kg bw/day were also observed in this study. The LEL was based on increased resorptions and increased postimplantation loss.

An oral developmental toxicity study performed with beta-cyfluthrin, the resolved isomer mixture of cyfluthrin, has been submitted to the Agency and is currently under review.

A developmental toxicity study in rats exposed via inhalation to liquid aerosols of cyfluthrin revealed developmental toxicity, but only in the presence of maternal toxicity. The developmental NOEL was 0.46 mg/m3 on the basis of reduced placental and fetal weights, and delayed ossification. The NOEL for overt maternal toxicity was <0.46 mg/m3, the LDT.

A 3-generation reproduction study in rats with systemic toxicity NOELs of 7.5 and 2.5 mg/kg bw/day for parental animals and their offspring, respectively. At HDLs, the body weights of parental animals and their offspring were reduced. Another multiple-generation reproduction study in rats has been submitted to the Agency and is currently under review.

The Agency used the rabbit developmental toxicity study with a maternal NOEL of 20 mg/kg bw/day to assess acute dietary exposure and determine a MOE for the overall U.S. population and certain subgroups. Since this toxicological endpoint pertains to developmental toxicity the population group of concern for this analysis was women aged 13 and above, the subgroup which most closely approximates women of child-bearing age. The MOE is calculated as the ratio of the NOEL to the exposure. The Agency calculated the MOE to be over 600. The Tier III acute dietary analysis calculated an MOE over 7,000 for this age group. Generally, MOE's greater than 100 for data derived from animal studies are regarded as showing no appreciable risk.

FFDCA Section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal effects and the completeness of the toxicity database.

The results of the 3-generation study in rats provided evidence suggesting that, with respect to effects of cyfluthrin on body weight, pups were more sensitive than adult rats. Thus, the Agency determined that an additional 3-fold uncertainty factor (UF) should be used in risk assessments to ensure adequate protection of infants and children.

Generally, EPA considers margins of exposure of at least 100 to indicate an adequate degree of safety. With an additional 3x uncertainty factor, this would be 300 for infants and children. Using the exposure assessments described above and based on the described toxicity data aggregate exposure to infants and children indicate a MOE in excess of 2,500. Thus, it can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyfluthrin residues.

F. International Tolerances

There are no Codex maximum residue levels (MRLs) currently established for residues of cyfluthrin on potatoes commodities.

The available data indicate that there is reasonable certainty of no harm from the aggregate exposure from all currently registered uses of cyfluthrin. Thus consistent with the provisions of the FFDCA as amended August 3, 1996, the time limitations on established cyfluthrin tolerance should be removed. (Mark Dow).

2. Huntsman Petrochemical Corporation

PP 5E4487

EPA has received a pesticide petition (PP 5E4487) from Huntsman Petrochemical Corporation, 3040 Post Oak Blvd., Houston, TX 77056 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for a $C_{(12-16)}$ linear alcohol, propoxylated aminated, and ethoxylated, also known as SURFONIC AGM550, applied to growing crops or to raw agricultural commodities after harvest. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The plant metabolism of $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated has not been investigated. However, due to their structural similarity, the metabolic pathway for $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated is expected to be similar to that of other alkyl amine ethoxylates which have been previously granted an exemption from tolerances.

2. *Analytical method.* Huntsman proposes a reverse phase liquid chromatography using RI detection method for $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated, giving a limit of detection of 0.2 to 1%. Although a method has not been developed to determine the low level concentrations of $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated, it is believed that a liquid chromatography/mass spectroscopy method could be developed for this product.

3. *Magnitude of residues.* Given the extensive and widespread use of structurally similar cationic surfactants in herbicide formulations, the added use of $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated will not contribute significantly to the total use-volume of these materials. The expected concentration of $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated, when used in a herbicide formulation, will be much lower than the concentration of any co-formulated pesticide active ingredient. Thus, the comparable application rate, on an grams/acre basis, will be significantly lower than that of any co-formulated active ingredient. Therefore, it is reasonable to assume that any potential residues resulting from the use of this material in a pesticide formulation would be insignificant.

B. Toxicological Profile

1. *Acute toxicity.* The results of acute toxicity testing using $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated have provided the following toxicity information: a rat acute oral toxicity study with an LD_{50} of 1.5 g/kg; a rabbit acute dermal toxicity study with an LD_{50} of greater than 2.0 g/kg; a primary irritation study in rabbits showing severe irritation/corrosion; and an eye irritation study in rabbits showing $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated to produce only slight ocular irritation. A delayed contact hypersensitivity study (Buehler method) in guinea pigs showed $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated to be negative (not a dermal sensitizer) when induced at 6% and challenged at 4%.

2. *Genotoxicty.* $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated did not induce point mutations *in vitro* in the Ames/*Salmonella-E. coli* reverse mutation assay in either the plate incorporation method or in the liquid pre-incubation method. In addition, $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated did not induce chromosomal aberrations or polyploidy in cultured human lymphocytes with and without metabolic activation.

3. *Reproductive and developmental toxicity.* A rat developmental toxicity study using $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated administered via the oral (gavage) route of exposure at dosages of 0, 25, 75, and 150 mg/kg/day, resulted in a No Adverse Effect Level (NOAEL) of 25 mg/kg/day for maternal toxicity, and a NOEL of 75 mg/kg/day for developmental toxicity. Primary effects observed in this study were decreased food consumption and decreased weight gain for the dams in both the 75 and 150 mg/kg/day dose groups, and reduced fetal body weights with related changes in the incidences of three skeletal variants (ossification) in the pups at the 150 mg/kg/day dose level.

4. *Subchronic toxicity.* A rat subchronic (90- day) toxicity study using $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated administered in the diet at target concentrations of 0, 20, 100, 1,000 or 3,000 ppm in males and 0, 20, 100, 500 or 1,000 ppm in females, resulted in a NOEL of 100 ppm in males and 500 ppm in females, corresponding to calculated dosages of 5.84 and 35.39 mg/kg/day, respectively. Primary effects observed in this study were decreased food consumption and decreased weight gain.

5. *Chronic toxicity.* $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated has not been tested in animal carcinogenicity assays. However, due to lack of response in the genotoxicity assays conducted on this material, and the lack of any obvious pre-neoplastic changes observed in the 90- day subchronic studies, $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated is not expected to be a carcinogen in animal assays.

6. *Animal metabolism.* The animal metabolism of $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated has not been investigated. However, due to their structural similarity, the metabolic pathway for $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated is expected to be similar to that of other alkyl amine ethoxylates which have previously been granted an exemption from tolerances.

7. *Metabolite toxicology.* The animal metabolism of $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated has not been investigated, and the metabolites have not been identified. However, due to their structural similarity, the metabolites of $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated are expected to be similar to those of other alkyl amine ethoxylates which have previously been granted an exemption from tolerances.

8. *Endocrine disruption.* No effects on endocrine or reproductive tissues were observed in rat and dog 90-day subchronic studies and in the rat teratology study conducted with $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated.

C. Aggregate Exposure

1. *Dietary exposure.* The results of acute, genotoxic, subchronic and developmental toxicity testing has shown $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated to be of low toxicity. Structurally and functionally similar alkyl amine ethoxylates, which currently have an exemption from tolerances, have also been shown to be of low toxicity in animal studies, and have been widely and extensively used in food-use herbicide products for many years. Any possible chronic dietary exposure of the general population from potential residues of these materials has existed historically, for a considerable period of time, with no evidence of adverse human health effects. Thus, the use of $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated as an inert ingredient in a pesticide formulation is not expected to result in adverse health effects from potential aggregate exposures.

2. *Food.* Exposures to $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated from ingestion of food are not expected to occur.

3. *Drinking water.* Exposures to $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated from ingestion of drinking water are not expected to occur.

4. *Non-dietary exposure.* This class of surfactants, of which $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated is part, is used extensively in a number of consumer household and personal care products which may be applied directly to the body. These uses are expected to result in much higher exposure than any exposure that would

result from the trace residue levels resulting from application to growing crops at relatively low concentrations. Therefore, the use of $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated in pesticide formulations would not be expected to significantly increase the existing background exposure level.

D. Cumulative Effects

$C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated, and other similar alkyl amine ethoxylates, have not been shown to produce specific target organ toxicity, thus there is no evidence of a common mechanism of toxicity with any other substance. There is no reason to expect that the use of $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated in pesticide products will contribute to any cumulative toxicity resulting from exposures to other substances having a common mechanism of toxicity.

E. Safety Determination

1. *U.S. population.* The results of acute, genotoxic, subchronic, and developmental toxicity testing have shown $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated to be of low toxicity. Similar alkyl amine ethoxylates, in both structure and function, which have previously been granted an exemption from tolerances, have also been shown to be of low toxicity in animal studies. The use of $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated is not expected to produce significant residue levels resulting from its application, at relatively low concentrations, to growing crops, and would thus, not be expected to significantly increase the existing background exposure level to alkyl amine ethoxylates. In addition, there is no evidence of adverse human health effects in any segment of the population from the historical exposure to these materials from a wide variety of products and uses. Therefore, Huntsman believes that there is a reasonable certainly that no harm will result to the general population (including infants and children) from aggregate exposures to $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated.

2. *Infants and children.* For the reasons outlined above, Huntsman believes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposures to $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated.

F. International Tolerances

No tolerances or exemptions from tolerances have been previously sought by Huntsman for $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated in agricultural applications. A maximum residue level has not been established for $C_{(12-16)}$ linear alcohol, propoxylated, aminated, and ethoxylated by the Codex Alimentarus Commission. (Bipin Gandhi).

[FR Doc. 98–21903 Filed 8–13–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–782A; FRL–6023–3]

Notice of Filing of a Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the amendment of pesticide petition (PP 6F4772), proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–782A, must be received on or before September 14, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Product Manager (PM-23) Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location/telephone and e-mail address: Rm. 237, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA, 703–305–6224, e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–782A] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–782A] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

Petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. EPA is publishing the petition summary verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Amended Petition

PP 6F4772. In the **Federal Register** of December 17, 1997 (62 FR 66083)(FRL–5759–1), EPA issued a notice that Dow Elanco, 9330 Zionsville Road, Indianapolis, IN 46268, proposed pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for the combined residues of the herbicide fluroxypyr 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid], in or on the raw agricultural commodities wheat, barley, and oats as follows: 0.5 parts per million (ppm) (grain), 10 ppm (straw and forage), 20 ppm (hay), and 0.5 ppm (aspirated grain fractions, wheat). Because residues of fluroxypyr MHE or fluroxypyr, free and conjugated, may occur in animal feeds derived from wheat, barley, and oats, the following meat and milk tolerances were also proposed: 0.1 ppm (meat, fat, milk, and meat byproducts except for kidney) and 0.5 ppm (kidney).

Dow AgroSciences LLC, (formerly DowElanco) has submitted to EPA an amended petition (PP 6F4772), proposing to amend 40 CFR part 180 by establishing a tolerance for the combined residues of the herbicide fluroxypyr 1-methylheptyl ester [1-methylheptyl ((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetate] and its metabolite fluroxypyr [((4-amino-3,5-dichloro-6-fluoro-2-pyridinyl)oxy)acetic acid] in or on the raw agricultural commodities wheat, barley, and oats as follows: 0.5 ppm (grain), 12 ppm (straw and forage), 20 ppm (hay), and 0.6 ppm (aspirated grain fractions, wheat). Because residues of fluroxypyr or its metabolite, free and conjugated, may occur in animal feeds derived from wheat, barley, and oats, the following meat and milk tolerances are also being proposed: 0.1 ppm (meat, fat, milk, and meat byproducts except for kidney) and 0.5 ppm (kidney).

[FR Doc. 98–22002 Filed 8–13–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

FEDERAL REGISTER NUMBER: 98–21799.

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, August 20, 1998, 10:00 a.m., Meeting Open to the Public.

The following item has been added to the agenda: Staff Director vacancy announcement.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 98–21984 Filed 8–12–98; 10:23 am]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: State Administrative Plans for the Individual Family Grant Program.

Type of Information Collection: Reinstatement, without change of a previously approved collection for which approval has expired.

OMB Number: 3067–0146.

Abstract: The Governor is required by law to administer the IFG program and FEMA is required to publish regulations and procedures. FEMA carries out its role by requiring a State Plan, which conforms to the regulations while allowing individual State procedural variations.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 168.

Frequency of Response: Annually.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before September 14, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email address at muriel.anderson@fema.gov.

Dated: August 10, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–21872 Filed 8–13–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Fire Academy Field Course Evaluation Form.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which has expired.

OMB Number: 3067–0233.

Abstract: The National Fire Academy Field Course Evaluation Form is used in all field deliveries of Academy courses. The form is primarily used to assess the

effectiveness of the course materials and instructor delivery. The demographic information is used in developing needs assessments and identifying the student population's representation.

Affected Public: Individuals or households.

Number of Respondents: 25,000.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 6,250.

Frequency of Response: One Time.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before September 14, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646–2625, FAX number (202) 646–3524, or email address at muriel.anderson@fema.gov.

Dated: August 10, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–21873 Filed 8–13–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: State Administrative Plan.

Type of Information Collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0138.

Abstract: The state Administrative Plan is a formal description of the participating State's emergency preparedness program and related State and local laws, executive directives, rules, plans and procedures. It documents and certifies the State's compliance with requirements of the authorizing statute. The plan is a one-time submission with annual update to keep it current. Plans and updates are submitted to the FEMA Regional Offices along with the annual applications for assistance under emergency management programs. FEMA uses the information to determine whether a State legally qualifies for Federal contributions for State and local emergency preparedness personnel and administrative expenses.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Estimated Time per Respondent: 20.

Estimated Total Annual Burden Hours: 1,120.

Frequency of Response: Annually.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before September 14, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 311, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email address at muriel.anderson@fema.gov.

Dated: August 10, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–21874 Filed 8–13–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Fire Academy Long Term Evaluation Forms.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0260.

Abstract: The National Fire Academy's long term evaluation forms will obtain course specific feedback from students and their supervisors regarding impact of course content on job performance. This information is needed to improve instruction and content. Demographic data are needed to identify differential in course impact.

Affected Public: Individuals or households.

Number of Respondents: 1500.

Estimated Time per Respondent: 20 minutes student and 10 minutes supervisor.

Estimated Total Annual Burden Hours: 375.

Frequency of Response: At the end of each course.

COMMENTS: Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 on or before September 14, 1998.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524, or email address at muriel.anderson@fema.gov.

Dated: August 4, 1998.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 98–21875 Filed 8–13–98; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1235–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 for the State of Tennessee (FEMA–1235-DR), dated July 23, 1998, and related determinations.

EFFECTIVE DATE: July 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 28, 1998.

(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)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–21869 Filed 8–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1235–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 for the State of Tennessee, (FEMA–1235-DR), dated July 23, 1998, and related determinations.

EFFECTIVE DATE: July 28, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Tennessee, is hereby amended to include Individual Assistance in 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 July 23, 1998:

Lawrence and Lewis Counties for Individual Assistance (already designated 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)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 98–21870 Filed 8–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1235–DR]

Tennessee; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Tennessee (FEMA–1235–DR), dated July 23, 1998, and related determinations.

EFFECTIVE DATE: July 23, 1998

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 23, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Tennessee, resulting from flooding and severe storms on July 13, 1998, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Tennessee.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Michael Polny of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Tennessee to have been affected adversely by this declared major disaster: Lawrence and Lewis Counties for Public Assistance.

All counties within the State of Tennessee are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(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)

James L. Witt,

Director.

[FR Doc. 98–21871 Filed 8–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1236–DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1236–DR), dated July 24, 1998, and related determinations.

EFFECTIVE DATE: July 24, 1998.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 24, 1998, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and

Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms, straight-line winds, tornadoes, heavy rain, and flooding on June 18–30, 1998, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Gary K. Pierson of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

The counties of Buffalo, Clark, Crawford, Dunn, Grant, Jackson, La Crosse, Monroe, Pepin, Pierce, St. Croix, Trempealeau, and Vernon for Public Assistance.

All counties within the State of Wisconsin are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(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)

James L. Witt,

Director.

[FR Doc. 98–21868 Filed 8–13–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 1998.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. WFC, Inc.; Waukon, Iowa; to acquire 100 percent of the voting shares of Iowa State Bank, Oelwein, Iowa (in organization).

B. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Voyager Financial Services Corporation, Eden, Prairie, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Voyager Bank, Eden Prairie, Minnesota. Voyager Bank currently operates as the Family Bank, f.s.b.

In connection with this application, Applicant also has applied to acquire Voyager Mortgage Corporation, Eden Prairie, Minnesota, and thereby engage in brokering mortgage loans for its own account and the account of others and activities usual in connection with brokering mortgage loans, pursuant to §§ 225.28(b)(1) and (b)(2) of Regulation Y.

Board of Governors of the Federal Reserve System, August 10, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–21803 Filed 8–13–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) has submitted to OMB for review and clearance under the Paperwork Reduction Act information collection requirements contained in its regulations under the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act" or the "Act"). The current Office of Management and Budget (OMB) clearance expires on August 31, 1998. The FTC proposes that OMB extend its approval for the regulations an additional three years through August 31, 2001.

DATES: Comments must be submitted on or before September 14, 1998.

ADDRESSES: Send written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10202, Washington, DC 20503, ATTN: Edward Clarke, Desk Officer for the Federal Trade Commission, and to Gary M. Greenfield, Office of the General Counsel, Federal Trade Commission, Washington, DC 20580, (202) 326–2753. All comments should be identified as responding to this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Nancy Warder, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–3048.

SUPPLEMENTARY INFORMATION: The FTC has submitted a request to OMB to extend the existing clearance to collect information (OMB Control Number 3084–0082) under FTC regulations promulgated pursuant to the Smokeless Tobacco Act (16 CFR Part 307). A **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 9, 1998 (63 FR 31479). No comments were received.

Description of the information collection and proposed use: The Smokeless Tobacco Act, 15 U.S.C. 4401–4408, requires, among other things, that manufacturers, packagers, and importers of smokeless tobacco products include health warnings on product packaging and in advertisements. The Act also requires that each manufacturer, packager, and importer of smokeless tobacco products submit a plan to the Commission specifying a method to rotate, display, and distribute the warning statement required to appear in advertising and labeling. The Commission is required to determine whether these plans comply with the act and implementing regulations. All the companies currently affected by these regulations have previously filed plans, but the plan submission requirement continues to apply in the event a company amends its plan, or if a new company enters the market.

Estimate of information collection annual hours burden: 1,000 hours (rounded). The FTC is reducing the estimated burden for fourteen smokeless tobacco companies to prepare and submit amended compliance plans from the current estimate of 2,000 hours to 1,000 hours, rounded up from 560. Staff believes the reduced estimate is conservative. Prior burden estimates were based on companies' experience preparing and filing their initial plans. At this stage, however, all affected companies have long ago filed their plans with the Commission and staff does not anticipate that any new company will enter the market. Additional annual reporting burdens would occur only if already compliant companies change the way they display the warnings required by the Smokeless Tobacco Act.

Although it is not possible to predict whether any of these companies will seek to amend an existing approved plan (and possibly none will), staff conservatively assumes that each company will file one amendment per year. This estimate is conservative because, over the past three years, only one company has voluntarily amended its plan and the Commission changed the relevant regulations only once. The voluntary amendment required only 40 hours to prepare, which is considerably less time than individual companies spend preparing their initial plans. Commission staff believes it reasonable to assume that each company would consume approximately that amount of time to prepare an amended plan. Based on these assumptions, the total annual hours burden should not exceed 1,000 hours (14 companies × 40 hrs. each, rounded to the nearest thousand).

Estimate of information collection annual cost burden: $63,000.

Labor costs: The total annualized cost to respondents should not exceed $63,000. This is based on the assumption that management or attorneys will account for 80% of the estimates 1,000 hours required to rewrite or amend the plans, at an hourly rate of $75, and that clerical support will account for the remaining time (20%) at an hourly rate of $15. (Management and attorney time: 1,000 hours × .8 = 800 hours × $75 = $60,000; clerical time: 1,000 hours × .20 = 200 hours × $15 = $3,000).

Capital or other non-labor costs: None. After the Commission approves a plan for the display of the warnings required by the Smokeless Tobacco Act, the companies were required to make additional submissions to the Commission only if there is a change in the way that they choose to display the warnings. Once the companies have prepared plates to print the required warnings on their labels, there are no additional set-up costs associated with the display of the warnings in labeling. Similarly, once the companies have prepared acetates of the required warnings for advertising and promotional materials, there are no additional set-up costs associated with printing the warnings in those materials. These set-up costs were incurred before October 1, 1995.

The Commission knows of no annual recordkeeping cost burden associated with the plans for the display of the warnings. The companies may keep copies of their plans to ensure that labeling and advertising complies with the requirements of the Smokeless Tobacco Act. Such recordkeeping would require the use of office supplies, such as file folders and papers, all of which the companies should have on hand in the ordinary course of their business.

Debra A. Valentine,

General Counsel.

[FR Doc. 98–21889 Filed 8–12–98; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Submission for OMB Review; Comment Request Entitled Blue Pages Project

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for approval of a new information collection entitled Blue Pages Project.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning Blue Pages Project.

DATES: *Comment Due Date:* October 13, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Beth Johnson, Federal Technology Service (202) 501–1938.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget to approve a new information collection concerning Blue Pages Project. This initiative will make Government listings in telephone directories easier to read and more informative. Surveys will be conducted to assess the public's reaction to changes that have been made and will continue to be made in the future.

B. Annual Reporting Burden

Respondents: 200; *annual responses:* 200; *average hours per response:* 2; *burden hours:* 100

Copy of Proposal

A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: August 10, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–21836 Filed 8–13–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–22]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized,underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 14, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 6, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–21575 Filed 8–13–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–060–07–1210–00]

Public Meetings Scheduled for the Northern & Eastern Mojave Planning Effort

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the U.S. Bureau of Land Management has scheduled seven workshops to update the public on the current range of alternatives for the BLM-managed public lands within the Northern and Eastern Mojave (NEMO) planning area. All meetings will begin at 6:30 p.m. with a 1-hour presentation, followed by a 2-hour openhouse question and answer workshop. The meetings are scheduled at the following locations:

Tuesday, August 18, 6:30–9:30 p.m., Barstow Holiday Inn, 1511 East Main Street, Barstow, CA

Thursday, August 20, 6:30–9:30 p.m., Kerr McGee Community Center, 100 West California Avenue, Ridgecrest, CA

Monday, August 24, 6:30–9:30 p.m., BLM Las Vegas Field Office, 4765 West Vegas Drive, Las Vegas, NV

Tuesday, August 25, 6:30–9:30 p.m., Needles Recreation Center, 1111 Civic Center Drive, Needles, CA

Wednesday, August 26, 6:30–9:30 p.m., Baker Senior Center, 73730 Baker Boulevard, Baker, CA

Tuesday, September 1, 6:30–9:30 p.m., Hilltop Hotel, 2000 Ostrems Way, San Bernardino, CA

Wednesday, September 2, 6:30–9:30 p.m., Holiday Inn—Magnolia Room, 303 East Cordova, Pasadena, CA

The 7.9 million acre NEMO planning area encompasses Death Valley National Park, the Mojave National Preserve, and 2 million acres of BLM-managed public lands adjacent to and between the two National Park Service (NPS) Units. The BLM and NPS are preparing separate management plans for the three management units to clarify each agency's alternatives and management objectives for each unit and reduce the size of the documents.

Final planning documents will include a general management plan for the Mojave National Preserve, an amended general management plan for Death Valley National Park, and an amendment to the BLM's California Desert Conservation Area Plan.

FOR MORE INFORMATION CONTACT: BLM external affairs in Riverside at (909) 697–5217/5220 or BLM Project Coordinator Edy Seehafer at (760) 252–6021.

Dated: August 11, 1998.

Alan Stein,

Assistant District Manager, Lands, Minerals, & Renewable Resources.

[FR Doc. 98–21987 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–911–1630–00]

Establishment of a Supplementary Rule

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of a supplementary rule prohibiting the possession and/or consumption of alcoholic beverages by persons under 21 years of age on public lands administered by the Bureau of Land Management (BLM) within the State of Arizona.

SUMMARY: Underage drinking is a growing problem on public lands. Such activity poses a significant health and safety hazard to both underage violators and other users of the public lands. This rule will allow BLM Law Enforcement Officers to restrict the possession and/or consumption of alcoholic beverages by minors in a manner consistent with state law.

EFFECTIVE DATE: This restriction will be effective October 1, 1998, and will remain in effect until terminated or modified by the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: State Staff Ranger, Bureau of Land Management. Arizona State Office, Law Enforcement Office, 222 N. Central Ave., Phoenix, AZ. 85004, 602/417–9339.

SUPPLEMENTARY INFORMATION: The authority for this restriction is provided in 43 CFR 8365.1–6. Persons who violate this restriction are subject to arrest and, upon conviction, may be fined up to $100,000 and/or imprisoned for not more than 12 months as amended by 18 USC 3571 and 18 USC 3581.

Dated: August 4, 1998.

John Christensen,

Acting State Director.

[FR Doc. 98–21831 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–018–1610–00/G010–G8–0252]

Notice of Availability of a Proposed Coordinated Resource Management Plan (CRMP) and Final Environmental Impact Statement (FEIS); Taos Field Office, New Mexico and San Luis Resource Area, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) Taos Field Office and Cañon City District, San Luis Resource Area have completed a Proposed CRMP/FEIS and Taos Resource Management Plan Amendment. This document contains a 15-year strategy for managing 94 miles of the Rio Grande from La Sauses, Colorado to Velarde, New Mexico, and 42.7 miles of its tributaries. The document also addresses legislative requirements for the Rio Grande Wild and Scenic River extension and study areas.

Copies are available for review at public libraries in Alamosa, Colorado, and in Taos, Santa Fe, Los Alamos, Española, and Albuquerque, New Mexico. Additional copies are available at the following BLM offices: San Luis Resource Area, 1921 State Street, Alamosa, Colorado; Taos Field Office, 226 Cruz Alta Road, Taos, New Mexico; New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico; and Albuquerque Field Office, 435 Montão Road NE, Albuquerque, New Mexico.

DATES: Protests related to decisions at the New Mexico Resource Management Plan level must be filed in writing to: Director, Bureau of Land Management, Attn: Ms. Brenda Williams, Protest Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240. An informal protest may be made on specific actions described in Chapter 2, Activity-Level Proposals. Informal protests must be filed in writing to the address below. All protests and informal protests must be post marked no later than September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Terry Humphrey, CRMP Team Leader, Taos Field Office, 226 Cruz Alta Road, Taos, NM 87571; phone (505) 758–8851.

SUPPLEMENTARY INFORMATION: This Proposed CRMP/FEIS is a plan for managing the public land and allocating resources along 94 miles of the Rio Grande and 42.7 miles of its tributaries. The plan addresses the following public land issues: Wild and Scenic Rivers, protection of riparian areas, soils, vegetation, water quality, terrestrial and aquatic habitat, historical and archaeological resources, scenic quality, recreation, commercial uses, access, and resource interpretation/education.

Under the Proposed Action, the BLM would implement the CRMP in both areas administered by the Taos Field Office and San Luis Resource Area, along with the following Taos Resource Management Plan amendments: designation of the identified areas of the Lower Gorge and Copper Hill Units as Areas of Critical Concern for wildlife habitat and scenic quality values; incorporation of the Guadalupe Area of Critical Environmental Concern into the Wild Rivers Recreation Area and expansion of the Recreation Area; exclusion of 58,765 acres from grazing; withdrawal of 73,820 acres from mineral entry; closure of 50,173 acres to mineral leasing; application of No Surface Occupancy standards for oil and gas development on 25,615 acres; closure of 65,432 acres to mineral material disposal; prohibition of land disposals, except for Color-of-Title sales (in the Dixon, New Mexico area) and three parcels identified for community needs; exclusion of rights-of-way from within the expanded Wild Rivers Recreation Area, the Lower Gorge Unit (with exceptions), and portions of the Copper Hill Unit. The BLM would also recommend the Rio Grande Bosque segment (as identified in Public Law 103–242) for Wild and Scenic River designation, with a Recreational classification, and the Rio Embudo for designation with a Wild classification. In other actions under the Proposed Plan, the agency would increase protection of riparian areas, vegetation, soils, water quality, wildlife habitat, and scenic quality, while placing limits on recreational uses in the corridor and restricting vehicle access to some areas.

Public participation has occurred throughout the CRMP process. A Notice of Availability for the Draft CRMP/EIS was published on June 27, 1997, in the **Federal Register** (Vol. 62, No. 124, pp. 34771–2), identifying the end of the comment period as October 8, 1997. The Notice was amended in the **Federal Register** on July 29, 1997 (Vol. 62, No. 145, p. 40540), extending the comment period to October 20, 1997. In response to numerous requests from the public, the comment period was extended to December 20, 1997 (**Federal Register**, Vol. 62, No. 191, p. 51682), allowing for a total of 177 days to review the document. Oral hearings were conducted in Alamosa, Colorado (August 19, 1997), Taos, New Mexico (August 20, 1997), Santa Fe, New Mexico (August 21, 1997), and Dixon, New Mexico (September 3, 1997).

Dated: August 10, 1998.

Steve Henke,

Taos Field Office Manager.

[FR Doc. 98–21832 Filed 4–13–98; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Request for Comments; Historic Properties in Franklin County, Pennsylvania; Determination of Eligibility for the National Register of Historic Places

On January 15, 1997, four historic farmsteads in Greene Township, Franklin County, Pennsylvania, were determined eligible for the National Register of Historic Places for their historic and architectural importance, following a request from the Federal Highway Administration. The four properties are the Chambers House, 325 Woodstock Road, the Hambright Farmstead, 1873 Ragged Edge Road, the Shollenberger Farmstead, 896 Ragged Edge Road, and the Shively Farmstead, 528 Ragged Edge Road.

Since the determinations of eligibility were issued, the National Park Service has received a request that the boundaries of the properties be redrawn. Documentation relative to this request was submitted to the National Register. Copies of this documentation are available from the National Register at the address below. In order to accommodate those who wish to provide new information concerning the boundaries of these properties, the National Park Service is providing a 60 day comment period. A written statement on the determinations of eligibility will be issued by the National Park Service within 30 days of the close of the comment period.

The determinations of eligibility remains in effect pending review of responses submitted during the comment period. In order to revise the boundaries the National Park Service must receive authoritative information, which evaluated in conjunction with documentation already on file, results in a finding that the determined eligible boundary does not accurately delineate the historic property in accordance with established National Register standards.

Comments should be addressed to the National Register of Historic Places,

National Park Service, 1849 C St., NW., Room NC400, Washington, DC 20240.

Carol D. Shull,

Keeper of the National Register of Historic Places, National Register, History and Education.

[FR Doc. 98–21882 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Arizona State Museum, University of Arizona, Tucson, AZ

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Arizona State Museum, University of Arizona, Tucson, AZ which meet the definition of "object of cultural patrimony" under Section 2 of the Act.

The seven cultural items consist of five *gaan* masks of painted wood and cloth, and two wands of painted wood.

In 1932, the Arizona State Museum purchased the five *gaan* masks from Grenville Goodwin who was carrying out field studies among the Western Apache at the time.

In 1936, the two wands were placed on loan with the Arizona State Museum from Grenville Goodwin, and donated to the museum in 1968 by Goodwin's widow.

According to museum records, the five *gaan* masks were made by John Robertson of the San Carlos Apache and subsequently used. Documentation is unclear whether these *gaan* were sold to Grenville Goodwin by John Robertson (Sr.) or his son, John Robertson, Jr. with his father's knowledge. In 1930, Mike Kirk, owner of Kirk's Trading Post, purchased the two wands from Tom Dosnos. Tom Dosnos acquired the wand at San Carlos at an unknown date from person(s) unknown. At a later date, Grenville Goodwin purchased these wands from the Kirk Trading Post, Manuelito, NM. Museum documentation and consultation with representatives of the San Carlos Apache Tribe of the San Carlos Reservation indicates these cultural items are San Carlos Apache. Representatives of the San Carlos Apache Tribe of the San Carlos Reservation state that the seven cultural items have ongoing traditional and cultural importance to the tribe itself and could not have been alienated by any individual.

Officials of the Arizona State Museum have determined that, pursuant to 43 CFR 10.2 (d)(4), these seven cultural items have ongoing historical, traditional, and cultural importance central to the tribe itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the Arizona State Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the San Carlos Apache Tribe of the San Carlos Reservation.

This notice has been sent to officials of the San Carlos Apache Tribe of the San Carlos Reservation, the Yavapai-Apache Nation of the Camp Verde Indian Reservation, the Fort McDowell Mohave-Apache Indian Community of the Fort McDowell Indian Reservation, the Tonto Apache Tribe, and the White Mountain Apache Tribe of the Fort Apache Reservation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Dr. Gwinn Vivian, Acting Repatriation Coordinator, Arizona State Museum, University of Arizona, Tucson, AZ 85721; telephone: (520) 621094500 before September 14, 1998. Repatriation of these objects to the San Carlos Apache Tribe of the San Carlos Reservation may begin after that date if no additional claimants come forward.

Dated: August 4, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 21833 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Stanislaus County, CA in the Possession of the California State University-Fresno, Fresno, CA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the California State University-Fresno, Fresno, CA.

A detailed assessment of the human remains was made by California State University-Fresno professional staff in consultation with representatives of the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

In 1969, human remains representing four individuals were recovered from site CA-STA-141 (Fresno State Catalog 69-17) during excavations conducted by Fresno State College (now California State University-Fresno) staff. No known individuals were identified. No associated funerary objects are present.

Catalog records prepared in 1972 indicate these human remains were excavated from the upper levels of the cultural deposit at or near the surface. Based on location and degree of preservation, these human remains have been determined to be Native American from the late precontact period (post-1500 A.D.). Archeological evidence from this area indicates a continuity of material culture from precontact times into the historic period. Historic documents, ethnographic accounts, and oral history further indicate occupation and use of this area since the late precontact period by Central Sierra Me-Wuk peoples.

Based on the above mentioned information, officials of the California State University-Fresno have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the California State University-Fresno have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California.

This notice has been sent to officials of the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Professor Roger LaJeunesse, Department of Anthropology, California State University-Fresno, 5245 North Backer Avenue, Fresno, CA 93740-0016; telephone: (209) 278-4900, before September 14, 1998. Repatriation of the human remains to the Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California may begin after

that date if no additional claimants come forward.

Dated: August 7, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–21886 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Fresno and King Counties, CA in the Possession of California State University-Fresno, Fresno, CA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Fresno and King Counties, CA in the possession of California State University-Fresno, Fresno, CA.

A detailed assessment of the human remains was made by California State University-Fresno professional staff in consultation with representatives of Santa Rosa Indian Community of the Santa Rosa Rancheria.

In 1950 and 1963, human remains representing seven individuals were recovered from sites CA-FRE-511 and CA-FRE-531, Fresno County, CA during excavations by the Fresno State College Archaeological Field Class under the supervision of Dr. William Beatty. No known individuals were identified. No associated funerary objects are present.

Based on the material culture recovered, sites CA-FRE-511 and CA-FRE-531 have been identified as village locations atop low mounds in the Fresno Slough dating to the late precontact period (post-1500 A.D.). Based on cultural material and burial locations within the villages, these human remains have been determined to be Native American. Based on the degree of preservation and cultural material at the site, these human remains have been determined to be from the late precontact period (post-1500 A.D.). Archeological evidence in this area indicates continuity of material culture from precontact times into the historic period. Early Yokuts people are presumed to have occupied the San Joaquin Valley and Central Sierran Foothills between 1000-500 B.C., with continued occupation into the historic period. Historic documents, ethnographic accounts, and oral history indicate occupation and use of this area since the late precontact period by Tachi Yokuts peoples, now represented by Santa Rosa Indian Community of the Santa Rosa Rancheria.

In 1972, human remains representing one individual were recovered from site CA-FRE-745, Fresno County, CA during a field survey by Fresno State College staff. No known individual was identified. No associated funerary objects are present.

Based on the material culture recovered at this site, CA-FRE-745 has been identified as a middle to late precontact site (1500 B.C.-1500 A.D.). Archeological evidence from this area indicates a continuity of material culture from the middle through late precontact times and into the historic period. Early Yokuts people are presumed to have occupied the San Joaquin Valley and Central Sierran Foothills between 1000-500 B.C., with continued occupation into the historic period. Historic documents, ethnographic accounts, and oral history indicate occupation and use of this area since the late precontact period by Tachi Yokuts peoples, now represented by Santa Rosa Indian Community of the Santa Rosa Rancheria.

In 1975, human remains representing nine individuals were recovered from site CA-KIN-43 King County, CA during salvage excavations conducted by California State University-Fresno staff. No known individuals were identified. No associated funerary objects are present.

Based on material culture of this site, CA-KIN-43 has been determined to be a mound occupation site dating to the middle and possibly late precontact period (1500 B.C.-1500 A.D.). Archeological evidence from this area indicates a continuity of material culture from the middle through late precontact times and into the historic period. Early Yokuts people are presumed to have occupied the San Joaquin Valley and Central Sierran Foothills between 1000-500 B.C., with continued occupation into the historic period. Historic documents, ethnographic accounts, and oral history indicate occupation and use of this area since the late precontact period by Tachi Yokuts peoples, now represented by Santa Rosa Indian Community of the Santa Rosa Rancheria.

Based on the above mentioned information, officials of the California State University-Fresno have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of seventeen individuals of Native American ancestry. Officials of the California State University-Fresno have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Santa Rosa Indian Community of the Santa Rosa Rancheria.

This notice has been sent to officials of the Santa Rosa Indian Community of the Santa Rosa Rancheria. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Professor Roger LaJeunesse, Department of Anthropology, California State University-Fresno, 5245 North Backer Avenue, Fresno, CA 93740-0016; telephone: (209) 278-4900, before September 14, 1998. Repatriation of the human remains to the Santa Rosa Indian Community of the Santa Rosa Rancheria may begin after that date if no additional claimants come forward.

Dated: August 7, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–21887 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Fresno and Madera Counties, CA in the Possession of the California State University-Fresno, Fresno, CA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the California State University-Fresno, Fresno, CA.

A detailed assessment of the human remains was made by California State University-Fresno professional staff in consultation with representatives of the Central Valley and Mountain Reinterment Association on behalf of Big Sandy Rancheria of Mono Indians, Picayune Rancheria of Chukchansi Indians, Table Mountain Rancheria, Northfork Rancheria of Mono Indians, and Cold Springs Rancheria of Mono Indians.

In 1969, human remains representing one individual were donated to Fresno

State College (now California State University-Fresno) by Mr. Charles M. Chapman, who uncovered the human remains during construction of a patio on his house in Oakhurst, CA. No known individual was identified. No associated funerary objects were present.

This individual has been identified as Native American based on the cultural material recovered during Mr. Chapman's patio construction. The cultural material, a small arrow point and several steatite bowl sherds, has been identified as being from the late precontact period based on appearance and construction. Archeological evidence from this area indicates a continuity of material culture from precontact times into the historic period. Historic documents, ethnographic accounts, and oral history further indicate occupation and shared use of this area since the late precontact period by both Yokuts and Mono peoples.

In 1970, human remains representing one individual were recovered from an eroding road cut at site CA-MAD-250 by Fresno State College staff. No known individual was identified. No associated funerary objects are present.

This individual has been identified as Native American from the late precontact period based on cultural material recovered from the site. Archeological evidence based on materical culture of this area indicates continuity of occupation since precontact times into the historic period. Historic documents, ethnographic accounts and oral histories further document Yokuts and Mono occupation of this area.

In 1970 and 1971, human remains representing two individuals were recovered from site CA-FRE-515 during archeological field classes conducted by Fresno State College. No known individuals were identified. No associated funerary objects are present.

Based on the degree of preservation and material culture from the midden component of the site, these human remains have been determined to be Native American dating from the late precontact period (post-1500 A.D.). Archeological evidence based on materical culture of this area indicates continuity of occupation since precontact times into the historic period. Historic documents, ethnographic accounts and oral histories further document Yokuts and Mono occupation of this area.

In 1974, human remains representing one individual were recovered from site CA-FRE-645 by Fresno State College staff during legally authorized test excavations. No known individuals were identified. No associated funerary objects are present.

CA-FRE-645 has been identified as a large habitation site with two components, one dating earlier than 1000 A.D. and the other after 1000 A.D. based on artifact assemblages. This individual has been identified as Native American based on cultural material and the location of the remains in the midden site. Based on the degree of preservation and the cultural material, these human remains are presumed to be from the late precontact period (post-1500 A.D.). Archeological evidence indicates a continuity of material culture from precontact times into the historic period. Historic documents, ethnographic accounts and oral histories further indicate occupation and shared use of this area since the late precontact period by both Yokuts and Mono peoples.

In 1975, human remains representing approximately two individuals were recovered from site CA-FRE-644 during excavations conducted by California State University-Fresno staff. No known individuals were identified. No associated funerary objects are present.

CA-FRE-644 has been identified as a habitation site with two components; traces of an early occupation, and a proto- to early historic period component based on cultural material of the site. The human remains appear to be associated with the principal proto- to early historic component of this site. Archeological evidence, based on material culture, indicates Yokuts and Mono affiliation. Ethnographic evidence and oral tradition presented by tribal representatives further indicate Yokuts and Mono affiliation to occupation sites in this area in the proto- and early historic periods.

Based on the above mentioned information, officials of the California State University-Fresno have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of approximately seven individuals of Native American ancestry. Officials of the California State University-Fresno have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Central Valley and Mountain Reinterment Association on behalf of Big Sandy Rancheria of Mono Indians, Picayune Rancheria of Chukchansi Indians, Table Mountain Rancheria, Northfork Rancheria of Mono Indians, and Cold Springs Rancheria of Mono Indians.

This notice has been sent to officials of the Central Valley and Mountain Reinterment Association on behalf of Big Sandy Rancheria of Mono Indians, Picayune Rancheria of Chukchansi Indians, Table Mountain Rancheria, Northfork Rancheria of Mono Indians, and Cold Springs Rancheria of Mono Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Professor Roger LaJeunesse, Department of Anthropology, California State University-Fresno, 5245 North Backer Avenue, Fresno, CA 93740-0016; telephone: (209) 278-4900, before September 14, 1998. Repatriation of the human remains to the Central Valley and Mountain Reinterment Association on behalf of Big Sandy Rancheria of Mono Indians, Picayune Rancheria of Chukchansi Indians, Table Mountain Rancheria, Northfork Rancheria of Mono Indians, and Cold Springs Rancheria of Mono Indians may begin after that date if no additional claimants come forward.

Dated: August 7, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–21888 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Museum of Indian Arts and Culture/ Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM which meets the definition of "unassociated funerary object" under Section 2 of the Act.

The nine cultural items consist of a shell ornament, a shell pendant, a group of worked ceramic disks, a quartz crystal, a calcite crystal, and a portion of a broken ceramic jar.

Between 1915-1925, the R.S. Peabody Foundation of Archaeology, Phillips Academy, Andover, MA carried out legally authorized excavations at Pecos Pueblo (site LA 625). At an unknown

date, these cultural items were donated to the Laboratory of Anthropology by the R.S. Peabody Museum. Although these cultural items were removed from individual burials, the human remains with which they were originally associated cannot be located, and may not have been removed during the excavations.

Excavation and museum records clearly indicate these cultural items were removed from specific burials of Native American individuals. Based on the archeological material from this site, Spanish Colonial documents, U.S. Government records, and oral history presented by the Apache Tribe of Oklahoma, the Comanche Tribe, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Cochiti, the Pueblo of Jemez, the Pueblo of Zuni, and the Wichita and Affiliated Tribes, this site dates from the Pueblo III period (ca. 1100 A.D.) to its abandonment in 1846. Although this site shares cultural affiliation with all the above listed tribes, based on oral history presented by the tribes, archeological evidence, historic documents, and a 1936 Congressional Act, this site is most closely affiliated with the Pueblo of Jemez.

Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these nine cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Pueblo of Jemez.

This notice has been sent to officials of the Apache Tribe of Oklahoma, the Comanche Tribe, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Tribe, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Cochiti, the Pueblo of Jemez, the Pueblo of Zuni, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Patricia House, Director, Museum of Indian Arts and Culture/ Laboratory of Anthropology, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504-2087; telephone (505) 827-6344 before September 14, 1998. Repatriation of these objects to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: August 4, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist,Manager, Archeology and Ethnography Program.

[FR Doc. 98–21884 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Associated Funerary Objects in the Possession of the Museum of Indian Arts and Culture/Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of associated funerary objects in the possession of Museum of Indian Arts and Culture/ Laboratory of Anthropology, Museum of New Mexico, Santa Fe, NM.

A detailed assessment of the associated funerary objects was made by Museum of Indian Arts and Culture/ Laboratory of Anthropology professional staff in consultation with representatives of the Apache Tribe of Oklahoma, the Comanche Indian Tribe, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Indian Tribe, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Cochiti, the Pueblo of Jemez, the Pueblo of Zuni, and the Wichita and Affiliated Tribes.

Between 1915-1925, 35 cultural items including ceramic bowls and a bone tool were recovered with human remains from Pecos Pueblo (LA 625) during legally authorized excavations conducted by the R.S. Peabody Foundation for Archaeology, Phillips Academy, Andover, MA. These objects are the known corresponding associated funerary objects of 34 individuals currently in the possession of the Peabody Museum, Harvard University, Cambridge, MA.

Based on material culture; Spanish Colonial documents; United States Government records; and oral history presented by the Apache Tribe of Oklahoma, the Comanche Indian Tribe, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Indian Tribe, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Cochiti, the Pueblo of Jemez, the Pueblo of Zuni, and the Wichita and Affiliated Tribes; Pecos Pueblo (LA 625) has been identified as a Puebloan occupation dating from the Pueblo III period (c. 1100 A.D.) to its abandonment in 1846. While this site has been determined to have shared cultural affiliation with the consulted tribes, the descendants and government of Peco Pueblo now reside at the Pueblo of Jemez.

Based on the above mentioned information, officials of the Museum of Indian Arts and Culture/Laboratory of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(2), the 35 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Museum of Indian Arts and Culture/ Laboratory of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these associated funerary objects and the Pueblo of Jemez.

This notice has been sent to officials of the Apache Tribe of Oklahoma, the Comanche Indian Tribe, the Hopi Tribe, the Jicarilla Apache Tribe, the Kiowa Indian Tribe, the Mescalero Apache Tribe, the Navajo Nation, the Pueblo of Cochiti, the Pueblo of Jemez, the Pueblo of Zuni, and the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these associated funerary objects should contact Patricia House, Director, Museum of Indian Arts and Cultures/ Laboratory of Anthropology, Museum of New Mexico, P.O. Box 2087, Santa Fe, NM 87504–2087; telephone: (505) 827–6344 before September 14, 1998. Repatriation of the associated funerary objects to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: July 30, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist,Manager, Archeology and Ethnography Program.

[FR Doc. 98–21885 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Plymouth, MA and an Associated Funerary Object from Barnstable, MA in the Possession of Pilgrim Hall Museum, Plymouth, MA

AGENCY: National Park Service
ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Plymouth, MA in the possession of Pilgrim Hall Museum, Plymouth, MA.

A detailed assessment of the human remains was made by Pilgrim Hall Museum professional staff in consultation with representatives of the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah).

In 1861, human remains representing one individual were recovered from Cummaquid, Barnstable, MA by Amos Otis while plowing a field. No known individual was identified. The associated funerary objects include a copper kettle, a canister of metal fragments and nails, and other grave goods.

Although these human remains had been believed to be those of Sachem Iyannough, examination of the remains indicated they were actually of a young woman. In 1974, this individual and most of the associated funerary objects were repatriated to Frank James (Wampanoag). This remaining container of metal fragments and nails which is clearly associated with the burial, was accidentally overlooked at that time and recently found during inventorying the collections. Based on the associated funerary objects, this burial has been determined to be from the historic period. Several 17th-century colonial sources indicate the presence of Wampanoag people in the Barnstable area during the early contact period.

The associated funerary object listed above constitutes a newly-found item from a previously repatriated collection. Because the previously repatriated collection was returned prior to the enactment of NAGPRA, this item is being published to document the return of an associated funerary object as part of an action on a repatriation request pending on the date of NAGPRA's enactment.

Based on the above mentioned information, officials of Pilgrim Hall Museum have determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of Pilgrim Hall Museum have also determined that, pursuant to 25 U.S.C. 3009 (2), this object is part of an action on a repatriation request pending on the date of enactment of NAGPRA and will therefore be repatriated to the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah).

In 1884, human remains representing one individual were recovered by Mr. Paulding from Watson's Hill in Plymouth, MA during house construction. In 1962, these human remains, consisting of hair fragments, were donated to Pilgrim Hall Museum by Eunice Paulding Bassett. No known individuals were identified. No associated funerary objects are present.

In 1884, human remains representing one individual were recovered by Dr. Edward B. Stephens from Watson's Hill in Plymouth, MA during house construction. At some time after 1884, Dr. Stephens donated a large Native collection to Pilgrim Hall Museum which contained the human remains, consisting of hair fragments. Documents note that during the house construction, Dr. Stephens recovered a skeleton, some hair, and a stone tablet. The location of the skeleton and stone tablet is unknown. No associated funerary objects are present in the collections of Pilgrim Hall Museum.

Based on historical documents, Watson's Hill in Plymouth, MA is a known settlement of the Patuxet Wampanoag who lived in the Plymouth area prior to the arrival of Europeans on the *Mayflower* and other ships. Early historic documents list the Native place name as *Cantaugheantiest*, a Wampanoag term meaning "planted fields." Based on the discovery of many human remains in this area, Watson's Hill is likely to have been a Patuxet Wampanoag burial ground in the late pre-contact and early historic periods.

Based on the above mentioned information, officials of Pilgrim Hall Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of Pilgrim Hall Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah).

This notice has been sent to officials of the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah). Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Karin J. Goldstein Curator, Pilgrim Hall Museum, 75 Court Street, Plymouth, MA 02360; telephone (508) 746–1620, ext. 4, before September 14, 1998. Repatriation of the human remains to the Wampanoag Repatriation Confederation on behalf of the Wampanoag Tribe of Gay Head (Aquinnah) may begin after that date if no additional claimants come forward.

Dated: August 4, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–21834 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Wisconsin in the Possession of the State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service
ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the State Historical Society of Wisconsin, Madison, WI.

A detailed assessment of the human remains was made by State Historical Society of Wisconsin professional staff in consultation with representatives of the Iowa Tribe of Oklahoma, Iowa Tribe of Kansas, Otoe/Missouria Tribe of Oklahoma, Ho-Chunk Nation of Wisconsin, and Winnebago Tribe of Nebraska.

During 1989-1991, human remains representing a minimum of 139 individuals were recovered from the Tremaine site (47-Lc-0095) by field crews of the Museum Archaeology Program, State Historical Society of Wisconsin under a cooperative agreement with the Wisconsin Department of Transportation as part of

the USH 53 Expressway Project. No known individuals were identified. The 139 associated funerary objects include ceramics, sherds, projectile point, scrapers, and flakes, shell, copper fragments, galena fragments, stone pipe bowls, catlinite fragments, bison scapula hoes, river cobbles, mammal bone, and wood fragments.

Based on radiocarbon data and ceramic typology, the Tremaine site has been identified as an Oneota occupation dating between 1300-1600 A.D. The Oneota tradition in western Wisconsin has generally been documented by native oral traditions, European explorers' accounts, historians, and anthorpologists as ancesteral to the present-day Iowa Tribe, the Ho-Chunk Nation of Wisconsin, and the Winnebago Tribe of Nebraska.

In 1989, humam remains representing a minimum of one individual were recovered from the Filler site (47-Lc-0149) by field crews of the Museum Archaeology Program, State Historical Society of Wisconsin under a cooperative agreement with the Wisconsin Department of Transportation as part of the USH 53 Expressway Project. No known individuals were identified. No associated funerary objects were present.

Based on radiocarbon dates and ceramic typology, the Filler site has been identified as an Oneota Valley View Phase occupation dating between 1500-1650 A.D. The Oneota tradition in western Wisconsin has generally been documented by native oral traditions, European explorers' accounts, historians, and anthorpologists as ancesteral to the present-day Iowa Tribe, the Ho-Chunk Nation of Wisconsin, and the Winnebago Tribe of Nebraska.

In 1986 and 1989, human remains representing a minimum of one indivdiual were recovered from the OT site (47-Lc-0262) by field crews of the Museum Archaeology Program, State Historical Society of Wisconsin under a cooperative agreement with the Wisconsin Department of Transportation as part of the USH 53 Expressway Project. No known individuals were identified. The 26 associated funerary objects include ceramics, ceramic sherds, lithics (including projectile points, scrapers, & flakes), shell, shell beads, a copper disc, copper beads, stone pipe bowls, and wood fragments.

Based on radiocarbon dates and ceramic typology, the OT site has been identified as an Oneota Valley View phase occupation dating between 1450-1650 A.D. The Oneota tradition in western Wisconsin has generally been documented by native oral traditions, European explorers' accounts, historians, and anthorpologists as ancesteral to the present-day Iowa Tribe, the Ho-Chunk Nation of Wisconsin, and the Winnebago Tribe of Nebraska.

Based on the above mentioned information, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 141 individuals of Native American ancestry. Officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 165 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Iowa Tribe of Oklahoma.

This notice has been sent to officials of the Iowa Tribe of Oklahoma, Iowa Tribe of Kansas, Otoe/Missouria Tribe of Oklahoma, Ho-Chunk Nation of Wisconsin, and Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact David Wooley, Curator of Anthropology, State Historical Society of Wisconsin, 816 State Street, Madison, WI 53706–1488; telephone: (608) 264-6574, before September 14, 1998. Repatriation of the human remains and associated funerary objects to the Iowa Tribe of Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 10, 1998.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 98–21835 Filed 8-13-98; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Department of Justice policy, notice is hereby given that on July 28, 1998, a proposed Consent Decree in *United States* v. *Anamet, Inc., et al.*, Civil No. 98–2174, was lodged in the United States District Court for the Central District of Illinois. The Compliant filed by the United States sought to recover costs incurred by the United States pursuant to CERCLA, 42 U.S.C. 9601 et seq., at the Dunavan Oil Site ("Site") in Oakwood, Vermilion County, Illinois. The Consent Decree requires Anamet Inc., Citizens Gas and Coke Utility, Nacco Materials Handling Group, Inc., General Electric Co., General Motors Corp., Panhandle Eastern Pipeline Co., R.R. Donnelly & Sons, Trunkline Gas Co., UNR Industries, Walker Construction Co., Board of Trustees of the University of Illinois, Liquid Waste Removal, and Gurney J. Busch, Inc., to reimburse the United States in the amount of $175,000.00 in past costs incurred by the United States in connection with the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Anamet, Inc., et al.*, D.J. Ref. No. 90–11–2–1262.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Central District of Illinois, 201 South Vine Street, Suite 226, Urbana, IL 61801 (contact Assistant United States Attorney David Hoff); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Jose DeLeon); and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, D.C. 20005, 202–624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $8.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–21913 Filed 8–13–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and Section 122 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed consent decree in *United States v. Atlas Lederer Co., et al.*, Civil No. C–3–91–309 (S.D. Ohio), was lodged with the United States District Court for the Southern District of Ohio on July 31, 1998, pertaining to the United Scrap Lead Superfund Site ("Site"), located near Troy, Ohio. The proposed consent decree would resolve the United States' civil claim against eight of the ten defendants named in this action, as well as the defendants' and EPA's putative claims against various federal agencies.

Under the proposed consent decree, the settling generator defendants, including a number of alleged generators who were not named in the United States' 1991 cost recovery compliant, will be obligated to perform and finance a $19.5-million remedy at the Site, and reimburse the Superfund for $1,351,000 of the United States' past costs of $6,172,000.

The settling generator defendants' past cost reimbursement obligation will be satisfied by the settling federal agencies. Those settling federal agencies also will pay the settling generator defendants $1,049,000 to be used for implementation of the remedy. Finally, the owner/operator defendants will reimburse the Superfund $443,500 and perform additional work in furtherance of the remedy.

The United Scrap Lead Superfund Site, which occupies approximately 25 acres of land, operated as a lead battery recycling facility from approximately 1946 to 1980. Of the 25 acres comprising the Site, approximately eight (8) acres are occupied by the former processing facilities and lead acid battery casing chips. The contaminated eight acres will be remedied under the proposed consent decree. The remedy to be implemented by the settling generator defendants consists of the following actions: (1) Excavation of all battery casing chips, with two treatment options—treatment on-site to meet RCRA's Land Disposal Restrictions ("LDRs"), or transportation to a RCRA Subtitle C treatment, storage and disposal facility for treatment to LDRs. Treated battery casing chips will be disposed of at an approved solid waste landfill; (2) excavation of the first foot of soils that exceeds 1550 kg/mg lead, and disposal of the soils off-site at an approved solid waste landfill; (3) excavation of on-site soils above the regional groundwater table that exceed the 1550 mg/kg lead cleanup level: these soils will be consolidated on-site under a RCRA landfill cap, or disposed of off-site at an approved solid waste landfill; (4) extensive groundwater monitoring; (5) institution of deed restrictions or other institutional controls to protect the solid waste cover system (among other purposes); and (6) construction of appropriate engineering controls to ensure adequate site drainage.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States v. Atlas Lederer Co., et al.*, Civil No. C–3–91–309 (S.D. Ohio), and DOJ Reference No. 90–11–3–279b.

The proposed consent decree may be examined at: (1) the Office of the United States Attorney for the Southern District of Ohio, Federal Building, Room 602, 200 W. Second St., Dayton, Ohio 45400 (937–225–2910); (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Sherry Estes (312–886–7164)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202)–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $27.50 for the consent decree only (110 pages at 25 cents per page reproduction costs), or $83.00 for the consent decree and all appendices (332 pages), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–21918 Filed 8–13–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on July 22, 1998, a proposed Consent Decree in *United States* v. *Donald V. Harper,* Civ. Action No. IP98–0998C–T/G was lodged with the United States District Court for the Southern District of Indiana. This Consent Decree represents a settlement of claims of the United States against Donald V. Harper ("Settling Defendant"), for reimbursement of response costs in connection with the Custom Finishing Site ("Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.* Under this settlement with the United States, Settling Defendant will pay $5,000, in reimbursement of response costs incurred by the United States at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Donald V. Harper,* D.J. Ref., 90–11–3–1766/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Indiana, U.S. Courthouse, Fifth Floor, 46 East Ohio Street, Indianapolis, IN 46204, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy of the Consent Decree, please enclose a check payable to the Consent Decree Library in the amount of $4 (25 cents per page reproduction cost) for a copy of the Consent Decree.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–21917 Filed 8–13–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Asbestos NESHAP

Under 28 CFR 50.7, notice is hereby given that on August 7, 1998, a proposed Consent Decree in *United States* v. *M.K. Moore and Sons, Inc.*, Civil Action No. c 3–96–319, was lodged with the United States District Court for the Southern District of Ohio.

In this action, the United States sought penalties and injunctive relief for claims under the Asbestos National Emissions Standard for Hazardous Air Pollutants ("NESHAP"), 40 CFR part 61, Subpart M, promulgated under section 112 of the Clean Air Act ("Act"), 42 U.S.C. 7412, for inspection, notice, work practice and waste disposal violations. The claims arose in connection with M.K. Moore and Son's asbestos renovation or pre-demolition projects at eight facilities in and around the Dayton, Ohio area. Under the Consent Decree, M.K. Moore and Sons will pay a civil penalty of $70,000 in four equal installments, will comply with the Asbestos NESHAP, and will undertake other injunctive actions, including designating an Asbestos Program Manager, training all supervisors, inspectors, and workers, providing monthly reports of its activities to U.S. EPA and the local air pollution control authority, and undertaking work practices to assure ease of monitoring of activities.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *M.K. Moore and Sons, Inc.*, D.J. Ref. No. 90–5–2–1–2072.

The Consent Decree may be examined at the Office of the United States Attorney, 602 Federal Building, 200 W. Second St., Dayton, OH 45402, at the Region 5 Office of the United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the above-referenced case and enclose a check in the amount of $10.25 ($.25 per page reproduction costs) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–21915 Filed 8–13–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to 28 CFR 50.7

Notice is hereby given that a proposed Stipulation, Settlement Agreement, and Order in *United States* v. *Northeast Ohio Regional Sewer District*, Civil Action No. 1:90CV1388, was lodged on August 7, 1998, with the United States District Court for the Northern District of Ohio. The proposed Stipulation, Settlement Agreement, and Order resolves the United States' claims against the Northeast Ohio Regional Sewer District for alleged violations of the Clean Water Act and its National Pollution Discharge Eliminations System permits.

The proposed Stipulation, Settlement Agreement, and Order requires the District to pay a civil penalty of $40,000, with 25 percent ($10,000) going to the State of Ohio. There is no injunctive relief because the District completed its reconstruction of the Westerly facility at issue in this matter in 1996 and has had over a year of continuous compliance with its NPDES permit since completing its reconstruction of the Westerly facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Stipulation, Settlement Agreement, and Order. Comments should be addressed to the Section Chief, the Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States* v. *Northeast Ohio Regional Sewer District*. Civil Action No. 1:90CV1388, DOJ Ref. No. 90–5–1–1–3453.

The proposed Stipulation, Settlement Agreement, and Order may be examined at the office of the United States Attorney, 1800 Bank One Center, 600 Superior Avenue, East, Cleveland, Ohio 44114; the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G. Street, NW., 4th Floor Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–21914 Filed 8–13–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 16, 1998, a proposed consent judgment in *Washington* v. *United States, et al.*, Civil Action No. C94–5326 FDB and *United States* v. *Washington, et al.*, Civil Action No. C94–5518 FDB, was lodged with the United States District Court for the Western District of Washington. Under the consent judgment, defendant State of Washington will pay $2.3 million in reimbursement of costs incurred by the United States in response to releases of hazardous substances at the Wyckoff/Eagle Harbor Superfund Site on Bainbridge Island, Washington. The State will also perform operation, maintenance, monitoring and habitat mitigation work at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent judgment. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Washington, et al.*, DOJ Ref. #90–7–1–525B.

The proposed consent judgment may be examined at the office of the United States Attorney, Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington 98104; the Region 10 Office of the U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library. In requesting a copy

please refer to the referenced case and enclose a check in the amount of $13.50 for the judgment alone, or $37.00 for the judgment and appendix. Make the check payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–21916 Filed 8–13–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Judgment

Notice is hereby given that defendant, National Service Industries, Inc. ("NSI"), the successor corporation to National Linen Services Corporation ("NLS"), has filed with the United States District Court for the Northern District of Georgia, Atlanta Division, a motion to terminate the Judgment in *United States* v. *National Linen Service Corporation*, Civil Action No. 5171, and that the Department of Justice ("Department"), in a stipulation also filed with the Court, has tentatively consented to termination of the Judgment but has reserved the right to withdraw its consent pending receipt of public comments. The Complaint in this case (filed April 25, 1955) alleged that NLS had monopolized and attempted to monopolize the linen supply business in the Southeastern United States, and had also entered into price fixing agreements with competing linen suppliers.

On June 28, 1956, a Judgment was entered against NLS. In 1964, the name of National Linen Service Corporation became National Service Industries, Inc. The Judgment applies to two subdivisions of NSI's textile rental division: National Linen Service and National Healthcare Linen Service. The provisions of the Judgment that are still in effect prohibit NSI from combining with any linen supply company or laundry to fix prices to consumers, allocate territories or customers, or exclude any person from engaging in the linen supply business. It further enjoins NSI from charging unreasonably low prices for the purpose of suppressing competition; offering to supply linens without charge or at prices that discriminate between different customers in the same trade area, where the effect may be to injure competition (except that NSI is permitted to lower its prices or offer rebates to meet competition); entering into any requirements contracts; making certain potentially defamatory representations to customers about competitors of NSI; threatening competitors or customers of competitors; coercing or agreeing with suppliers not to sell to competitors of NSI; entering into employment contracts with certain non-compete provisions; and from acquiring an interest in certain competing firms.

The Department has filed with the Court a Memorandum setting forth the reasons why the Government believes that termination of the Judgment would serve the public interest. Copies of NSI's motion papers, the Stipulation containing the Government's consent, the Government's Memorandum and all further papers filed with the Court in connection with this motion will be available for inspection at the Legal Procedures Unit of the Antitrust Division, Room 215 North, Liberty Place, Washington, DC 20530, and at the Office of the Clerk of the United States District Court for the Northern District of Georgia, Atlanta Division, 2211 Richard Russell Building, 75 Spring Street, S.W., Atlanta, GA 30303–3361. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the decree to the Government. Such comments must be received by the Division within sixty (60) days and will be filed with the Court by the Government. Comments should be addressed to Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, Department of Justice, Liberty Place Building, Suite 300, 325 7th Street, N.W., Washington, DC 20530.

Rebecca P. Dick,

Director, Civil Non-Merger Enforcement.

Stipulation

It is stipulated by and between the undersigned parties by their respective attorneys that:

1. Defendant, National Service Industries, Inc. ("NSI"), the successor corporation to National Linen Services Corporation, will publish at its expense a Notice, in the form attached as Attachment 1, in (a) two consecutive issues of *Textile Rental* and (b) two consecutive issues of *Industrial Launderer;* an Order, in the form attached as Attachment 2, directing such publication, may be filed and entered by the Court forthwith without further notice to any party or any other proceedings.

2. The United States will publish in the **Federal Register** a notice announcing NSI's motion and the Department's tentative consent to it, summarizing the Complaint and Judgment, describing the procedures for inspection and obtaining copies of relevant papers, and inviting the submission of comments.

3. An Order in the form attached hereto as Attachment 3 terminating the Judgment entered in this cause of action on June 28, 1956, as amended, may be filed and entered by the Court, upon the request of any party or by the Court *sua sponte,* at any time more than 70 days after the last publication of the notices required by Paragraphs 1 and 2 of this stipulation and without further notice to any party or any other proceedings, provided that Plaintiff has not withdrawn its tentative consent, which it may do at any time before the entry of an Order terminating the Consent Decree by filing notice of withdrawal of its consent with the Court and serving a copy of said notice upon the other party.

4. In the event plaintiff withdraws its consent, or if the proposed Order terminating the decree is not entered pursuant to this stipulation, then this stipulation shall be of no effect whatsoever, the making of this stipulation shall be without prejudice to any party in this or any other proceeding, and the stipulation shall not thereafter be used in this or any other action or for any other purpose.

For the Plaintiff, United States of America.

Joel I. Klein,

Assistant Attorney General, Antitrust Division.

A. Douglas Melamed,

Principal Deputy Asst. Attorney General, Antitrust Division.

Rebecca P. Dick,

Director, Civil Non-Merger Enforcement, Antitrust Division.

Mary Jean Moltenbrey,

Chief, Civil Task Force, Antitrust Division.

Susan L. Edelheit,

Asst. Chief, Civil Task Force, Antitrust Division.

Theodore R. Bolema,

Attorney, Antitrust Division, U.S. Department of Justice, Liberty Place Building, Suite 300, 325 7th Street, NW., Washington, DC 20530, Telephone: (202) 616–5945.

For the Defendant National Service Industries, Inc.

Eric Queen,

Fried, Frank, Harris, Shriver & Jacobson, One New York Plaza, New York, NY 10004–1980, Telephone: (212) 859–8077.

Counsel for National Service Industries, Inc.

Notice of Proposed Termination of the Consent Decree Entered Against National Linen Service on June 28, 1956

Please take notice that National Service Industries, Inc. ("NSI"), the successor corporation to National Linen Service Corporation, the named defendant in the Consent Decree entered by the Court in the above-captioned matter on June 28, 1956, has asked this Court to enter a judgment terminating the Consent Decree.

The United States has filed with the Court a memorandum setting forth the reasons why it believes that termination of the Consent Decree would serve the public interest. Copies of NSI's motion to terminate, the stipulation containing the United States' tentative consent, the United States' memorandum, and all further papers filed with the court in connection with this motion will be available for inspection at the Legal Procedures Unit of the Antitrust Division, Room 215 North, Liberty Place Building, Washington, DC 20530, and at the Office of the Clerk of the United States District Court for the Northern District of Georgia, Atlanta Division, 2211 Richard Russell Building, 75 Spring Street, S.W., Atlanta, GA 30303–3361. Copies of any of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Consent Decree to the United States. Such comments must be received by the Antitrust Division within sixty (60) days and will be filed with the Court by the United States. Comments should be addressed to Mary Jean Moltenbrey, Chief, Civil Task Force, Antitrust Division, Department of Justice, 325 7th Street, NW, Suite 300, Washington, D.C. 20530.

Order Establishing Notice and Public Comment Procedures for Motion To Terminate Consent Decree

Defendant, National Service Industries, Inc. ("NSI"), the successor corporation to National Linen Services Corporation, having moved for an order terminating the Consent Decree entered by this court in 1956 in this case; Plaintiff, the United States of America, having tentatively consented to said motion; Plaintiff having proposed, and Defendant have agreed, that notice of the motion and of Plaintiff's tentative consent be published at the expense of Defendant, and that all interested persons be given an opportunity to submit comments concerning the proposed termination of the Consent Decree; and it appearing to the Court desirable to invite such comments, and in consideration of the stipulation of the parties dated_____, 199__, it is:

Ordered, that the Defendant, NSI, publish at its own expense a notice in the form attached hereto as Exhibit "A" in two consecutive issues of *Textile Rental* and *Industrial Launderer* and file proof of such publication with the Court; and it is:

Further Ordered, that copies of all comments received by Plaintiff within sixty (60) days after the last publication of a notices required by this Order shall be filed with this Court by Plaintiff promptly after it receives such comments; and it is:

Further ordered, that this Court will not rule upon the motion of NSI until at least the seventieth (70th) day after the last publication of the notice of required by this Order.

Done, this_____ day of_____, 199__.

_____

United States District Judge

Judgment Terminating Consent Decree

This cause having come on to be heard on the motion of National Service Industries, Inc. ("NSI"), the successor corporation to National Linen Service Corporation, for termination of the Judgment entered in this case on June 28, 1956, and the United States of America having represented to the Court that it has no objection to the motion and notice of the motion having been published in the **Federal Register**, *Textile Rental* and *Industrial Launderer* and all interested parties having been given an opportunity to submit comments concerning the proposed termination of the Consent Decree, and the Court having considered all papers and comments filed in connection with this motion, and the Court finding that is in the public interest to terminate the Consent Decree, it is,

Ordered, Adjudged, and Decreed:

That said judgment is hereby terminated.

Dated: _____

_____

United States District Judge

Memorandum of the United States in Response to the Motion of National Service Industries, Inc. for Judgment Terminating Consent Decree

National Service Industries, Inc. ("NSI"), the successor corporation to National Linen Service Corporation, has moved this Court to terminate the Judgment, entered by this Court on June 28, 1956. In a stipulation between NSI and the United States, (1) NIS agreed to publish notice of its motion and invitation for comments thereon in *Textile Rental* and *Industrial Launderer*, (2) the United States agreed to publish notice in the **Federal Register**, and (3) the United States tentatively consented to the entry of a judgment terminating the Judgment at any time more than 70 days after the last publication of such notice.

This memorandum summarizes the Complaint that initiated this action and the resulting Judgment, explains the reason why the United States has consented to termination of the Judgement, and discusses the legal standards and precedents respecting termination or modification of consent decrees. It also discusses the procedures proposed by the United States, and agreed to by NSI, for giving public notice of the pending motion, obtaining public comment on the motion, and assuring the right of the United States to withdraw its consent after any comments are received from nonparties.

I

The Complaint and the Judgment

On April 25, 1955, the United States filed in this Court a civil complaint against National Linens Services, Inc. ("NLS"), the leading supplier of linen services in the Southeastern United States, charging NLS with monopolization and attempted monopolization of the linen service business in several Southern states in violation of Section 2 of the Sherman Act, 15 U.S.C. 2, and also of price fixing in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Specifically, the Complaint alleged that the defendant bought out hundreds of competitors, suppressed competition by providing service below its costs in areas in which the defendant faced competition, gave customers rebates and other inducements not to deal with competitors, threatened to force competitors out of business, and entered into price fixing agreements with several remaining competitors.

On June 28, 1956, the Judgment was entered against NLS. Several provisions relating to notification of third parties of any divestiture of certain subsidiaries by NSI have long since expired. The provisions still in effect prohibit NSI from engaging in certain conduct in the relevant geographic market. Specifically, the Judgment enjoins the defendant from combining with any linen supply company or laundry to fix prices to consumers, allocate territories or customers, or exclude any person from engaging in the linen supply business. The Judgment also enjoins the defendant from charging unreasonably

low prices for the purpose of suppressing competition, and from offering to supply linens without charge or at prices that discriminate between different customers in the same trade area, where the effect may be to injure competition (except that NSI is permitted to lower its prices or offer rebates to meet competition). The Judgment further enjoins NSI from entering into any requirements contracts, from making certain potentially defamatory representations to customers about competitors of NSI, from threatening competitors or customers of competitors, and from coercing or agreeing with suppliers not to sell to competitors of NSI. Finally, the Judgment also enjoins NSI from entering into employment contracts with certain non-compete provisions and from acquiring an interest in certain competing firms.

In 1964, the name of National Linen Service Corporation became National Service Industries, Inc. The Judgment applies to two subdivisions of NSI's textile rental division: National Linen Service and National Healthcare Linen Service.

II

Legal Standards Applicable to the Termination of an Antitrust Decree With the Consent of the Government

This Court has jurisdiction to modify or terminate the Judgment pursuant to Section XIX of the Judgment, Rule 60(b)(5) of the Federal Rules of Civil Procedure, Fed. R. Civ. P.60(b)(5), and "principles inherent in the jurisdiction of the chancery." *United States* v. *Swift & Co.*, 286 U.S. 106, 114 (1932).

Where, as here, the United States tentatively has consented to a proposed termination or modification of a judgment in a government antitrust case, the issue before the Court is whether termination or modification is in the public interest. *See, e.g., United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir. 1993); *United States* v. *Western Elec. Co.*, 900 F.2d 283, 305 (D.C. Cir. 1990), *cert. denied*, 111 S. Ct. 283 (1990); *United States* v. *Loew's, Inc.*, 783 F. Supp. 211 (S.D.N.Y. 1992); *United States* v. *Columbia Artists Management, Inc.*, 662 F. Supp. 865, 869–70 (S.D.N.Y. 1987), *citing United States* v. *Swift & Co.*, 1975–1 Trade Cas. (CCH) ¶ 60,201, at 65,702–03, 65,706 (N.D. Ill. 1975); *cf. United States* v. *American Cyanamid Co.*, 556 F. Supp. 361, 367 (S.D.N.Y. 1983), *rev'd. on other grounds*, 719 F.2d 558 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984). This is the same standard that a District Court applies in reviewing an initial consent judgment in a government antitrust case. *See* 15 U.S.C. 16(e); *Western Elec. Co.*, 900 F.2d at 295; *United States* v. *AT&T*, 552 F. Supp. 131, 147 n.67 (D.D.C. 1982), *aff'd sub nom, Maryland* v. *United States*, 406 U.S. 1001 (1983); *United States* v. *Radio Corp. of Am.*, 46 F. Supp. 654, 656 (D. Del. 1942), *appeal dismissed*, 318 U.S. 796 (1943).

The Supreme Court has held that where the words "public interest" appear in federal statutes designed to regulate public sector behavior, they "take meaning from the purposes of the regulatory legislation." *NAACP* v. *FPC*, 425 U.S. 662, 669 (1976); *see also System Fed'n No. 91* v. *Wright*, 364 U.S. 642, 651 (1961). The purpose of the antitrust laws, the "regulatory legislation" involved here, is, of course, to protect competition. *E.g., United States* v. *Penn-Olin Chem. Co.*, 378 U.S. 158, 170 (1964) (antitrust laws reflect "a national policy enunciated by the Congress to preserve and promote a free competitive economy.") Thus, the relevant question before the Court at this time is whether termination of the Judgment would serve the public interest in "free and unfettered competition as the rule of trade." *Northern Pac. Ry. Co.* v. *United States*, 356 U.S. 1, 4 (1958); *see also Western Elec. Co.*, 900 F.2d at 308; *United States* v. *American Cyanamid*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 405 U.S. 1101 (1984); *United States* v. *Loew's, Inc.*, 783 F. Supp. at 213.

It has long been recognized that the government has broad discretion in settling antitrust litigation on terms that will best serve the public interest in competition. *See Sam Fox Pub'g Co.* v. *United States*, 366 U.S. 683, 689 (1961). The court's role in determining whether the initial entry of a consent decree is in the public interest, absent a showing of abuse of discretion or a failure to discharge its duty on the party of the government, is to determine whether the government's explanation is reasoned and not to substitute its own opinion, *United States* v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); *see also United States* v. *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981), *cert. denied*, 454 U.S. 1083 (1981), *quoting United States* v. *National Broad. Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978). The government may reach any of a range of settlements that are consistent with the public interest. *See, e.g., Western Elec.*, 900 F.2d at 307–09; *Bechtel*, 648 F.2d at 665–66; *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975). The court's role is to conduct a limited review to "insur[e] that the government has not breached its duty to the public in consenting to the decree," *Bechtel*, 648 F.2d at 666, through malfeasance or by acting irrationally.

The standard is the same when the government consents to the termination or modification of an antitrust judgment. *Swift & Co.*, 1975–1 Trade Cas. (CCH) ¶ 60,201, at 65,702–03. Where the Department of Justice has offered a reasoned and reasonable explanation of why the termination or modification vindicates the public interest in free and unfettered competition, and there is no showing of abuse of discretion or corruption affecting the government's recommendation, the Court should accept the Department's conclusion concerning the appropriateness of termination or modification.

III

Reasons Why the United States Tentatively Consents to Termination of a Judgment

The nature of competition for linen services has changed dramatically from what it was in 1956 and will undoubtedly continue to change in the future. Many new linen suppliers and uniform companies have entered the markets in which the defendant operates and not compete successfully against NIS. The Judgment has accomplished its remedial objective of permitting competition to develop in these markets, so that the alleged predatory practices that gave rise to the Complaint in 1955 are unlikely to be effective today. The remaining injunctive provisions do not proscribe any conduct that is not already proscribed by the Sherman Act and case law, and thus no longer serve any useful purpose. Indeed, the remaining injunctions may deter vigorous competition by NSI that could only benefit consumers. For all of the foregoing reasons, the United States concludes that termination of the Judgment is in the public interest.

IV

Proposed Procedures for Giving Public Notice of the Pending Motion and Inviting Comment Thereon

The opinion in *Swift & Co.*, 1975–1 Trade Cas. (CCH) ¶ 60,201, at 65,703, articulates a court's responsibility to implement procedures that will give nonparties notice of, and an opportunity to comment upon, antitrust judgment modifications proposed by consent of the parties:

> Cognizant * * * of the public interest in competitive economic activity, established

chancery powers and duties, and the occasional fallibility of the Government, the court is, at the very least, obligated to ensure that the public, and all interested parties, have received adequate notice of the proposed modification. * * * (Footnote omitted.)

The Department of Justice believes that giving the public notice of the filing of a motion to terminate the Judgment in a government antitrust case, and an opportunity to comment upon that motion, is generally necessary to ensure that both the Department and the Court properly assess the public interest. Accordingly, over the years, the Department has adopted and refined a policy of consenting to motions to modify or terminate antitrust judgments only on condition that an effort be undertaken to notify potentially interested persons of the pendency of the motion. In the case at bar, the United States has proposed, and NSI has agreed to, the following:

1. The Department will publish in the **Federal Register** a notice announcing NSI's motion and the Department's tentative consent to it, summarizing the Complaint and Judgment, describing the procedures for inspecting and obtaining copies of relevant papers, and inviting the submission of comments.

2. NSI will publish notice of its motion in two consecutive issues of *Textile Rental* and two consecutive issues of *Industrial Launderer*. These periodicals are trade journals likely to be read by persons interested in the markets affected by the Judgment. The published notices will provide for public comment during the following 60 days.

3. The Department of Justice will file with the Court copies of all comments that it receives.

4. The parties will stipulate that the Court will not rule upon the motion for at least 70 days after the last publication by defendant of the notices described above (and thus for at least 10 days after the close of the period for public comments), and the Department will reserve the right to respond to comments or withdraw its consent to the motion at any time until an order modifying or terminating the Judgment is entered.

This procedure is designed to provide all potentially interested persons with notice that a motion to terminate the Judgment is pending and an adequate opportunity to comment thereon. NSI has agreed to follow this procedure, including publication of appropriate notices. The parties are therefore submitting to the Court a separate proposed order establishing this procedural approach, asking that it be entered forthwith.

V

Conclusion

For the foregoing reasons, the United States (1) asks the Court to enter the order submitted herewith directing publication of notice of NSI motion, and (2) tentatively consents to the termination of the Judgment herein.

Dated:

Theodore R. Bolema,

Attorney, Antitrust Division, U.S. Department of Justice, Liberty Place Building, Room 300, 325 7th Street, NW., Washington, DC 20530, (202) 616–5945.

Attorney for the Plaintiff, United States of America

[FR Doc. 98–21911 Filed 8–13–98; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

PUBLIC ANNOUNCEMENT

Pursuant To The Government In the Sunshine Act (Public Law 94–409 [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 2:00 p.m., Monday, August 17, 1998.

PLACE: 5550 Friendship Boulevard, Suite 400, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTER TO BE CONSIDERED: The meeting is being held to discuss the budget proposal for the fiscal year 2000.

Earlier notice of this meeting could not be made because the Commission was only advised on this date of the deadline set by the Department of Justice for the draft budget proposal, and a later meeting would conflict with Commissioners' schedules.

AGENCY CONTACT: Pamela Posch, Office of the General Counsel, United States Parole Commission, (301) 492–5959.

Dated: August 11, 1998.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 98–21986 Filed 8–12–98; 11:00 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29

CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

Volume VII

Nevada
NV980009 (Aug. 14, 1998)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Virginia
VA980017 (Feb. 13, 1998)
VA980018 (Feb. 13, 1998)
VA980080 (Feb. 13, 1998)
West Virginia
WV980002 (Feb. 13, 1998)
WV980003 (Feb. 13, 1998)
WV980006 (Feb. 13, 1998)

Volume III

Florida
FL980014 (Feb. 13, 1998)
FL980015 (Feb. 13, 1998)
FL980016 (Feb. 13, 1998)
FL980017 (Feb. 13, 1998)
FL980049 (Feb. 13, 1998)
FL980053 (Feb. 13, 1998)
FL980055 (Feb. 13, 1998)
FL980076 (Feb. 13, 1998)
Kentucky
KY980001 (Feb. 13, 1998)
KY980002 (Feb. 13, 1998)
KY980003 (Feb. 13, 1998)
KY980007 (Feb. 13, 1998)
KY980025 (Feb. 13, 1998)
KY980027 (Feb. 13, 1998)
KY980029 (Feb. 13, 1998)
KY980044 (Feb. 13, 1998)

Volume IV

Michigan
MI980001 (Feb. 13, 1998)
MI980002 (Feb. 13, 1998)
MI980003 (Feb. 13, 1998)
MI980004 (Feb. 13, 1998)
MI980005 (Feb. 13, 1998)
MI980007 (Feb. 13, 1998)
MI980012 (Feb. 13, 1998)
MI980017 (Feb. 13, 1998)
MI980023 (Feb. 13, 1998)
MI980030 (Feb. 13, 1998)
MI980031 (Feb. 13, 1998)
MI980034 (Feb. 13, 1998)
MI980039 (Feb. 13, 1998)
MI980040 (Feb. 13, 1998)
MI980046 (Feb. 13, 1998)
MI980047 (Feb. 13, 1998)
MI980049 (Feb. 13, 1998)
MI980059 (Feb. 13, 1998)
MI980060 (Feb. 13, 1998)
MI980062 (Feb. 13, 1998)
MI980063 (Feb. 13, 1998)
MI980064 (Feb. 13, 1998)
MI980066 (Feb. 13, 1998)
MI980067 (Feb. 13, 1998)
MI980068 (Feb. 13, 1998)
MI980069 (Feb. 13, 1998)
MI980070 (Feb. 13, 1998)
MI980071 (Feb. 13, 1998)
MI980072 (Feb. 13, 1998)
MI980073 (Feb. 13, 1998)
MI980074 (Feb. 13, 1998)
MI980075 (Feb. 13, 1998)
MI980076 (Feb. 13, 1998)
MI980077 (Feb. 13, 1998)
MI980078 (Feb. 13, 1998)
MI980079 (Feb. 13, 1998)
MI980080 (Feb. 13, 1998)
MI980081 (Feb. 13, 1998)
MI980082 (Feb. 13, 1998)
MI980083 (Feb. 13, 1998)
MI980084 (Feb. 13, 1998)
Minnesota
MN980003 (Feb. 13, 1998)
MN980005 (Feb. 13, 1998)
MN980007 (Feb. 13, 1998)
MN980008 (Feb. 13, 1998)
MN980015 (Feb. 13, 1998)
MN980027 (Feb. 13, 1998)
MN980031 (Feb. 13, 1998)
MN980035 (Feb. 13, 1998)
MN980039 (Feb. 13, 1998)
MN980058 (Feb. 13, 1998)
MN980059 (Feb. 13, 1998)
MN980061 (Feb. 13, 1998)
Ohio
OH980001 (Feb. 13, 1998)
OH980002 (Feb. 13, 1998)
OH980003 (Feb. 13, 1998)
OH980014 (Feb. 13, 1998)
OH980026 (Feb. 13, 1998)
OH980027 (Feb. 13, 1998)
OH980028 (Feb. 13, 1998)
OH980029 (Feb. 13, 1998)
OH980032 (Feb. 13, 1998)
OH980035 (Feb. 13, 1998)
Wisconsin
WI980020 (Feb. 13, 1998)
WI980035 (Feb. 13, 1998)
WI980066 (Feb. 13, 1998)
WI980067 (Feb. 13, 1998)

Volume V

Kansas
KS980009 (Feb. 13, 1998)
KS980011 (Feb. 13, 1998)
KS980019 (Feb. 13, 1998)
KS980025 (Feb. 13, 1998)
KS980026 (Feb. 13, 1998)
KS980063 (Feb. 13, 1998)
Louisiana
LA980004 (Feb. 13, 1998)
LA980005 (Feb. 13, 1998)
LA980009 (Feb. 13, 1998)
LA980012 (Feb. 13, 1998)
LA980014 (Feb. 13, 1998)
LA980018 (Feb. 13, 1998)
Texas
TX980005 (Feb. 13, 1998)
TX980007 (Feb. 13, 1998)
TX980014 (Feb. 13, 1998)
TX980069 (Feb. 13, 1998)

Volume VI

Alaska
AK980001 (Feb. 13, 1998)
Colorado
CO980001 (Feb. 13, 1998)
CO980002 (Feb. 13, 1998)
CO980004 (Feb. 13, 1998)
CO980006 (Feb. 13, 1998)
CO980007 (Feb. 13, 1998)
CO980008 (Feb. 13, 1998)
CO980009 (Feb. 13, 1998)
CO980010 (Feb. 13, 1998)
CO980016 (Feb. 13, 1998)
CO980021 (Feb. 13, 1998)
CO980022 (Feb. 13, 1998)
CO980025 (Feb. 13, 1998)
Montana
MT980008 (Feb. 13, 1998)
Wyoming
WY980009 (Feb. 13, 1998)

Volume VII

Nevada
NV980001 (Feb. 13, 1998)
NV980002 (Feb. 13, 1998)
NV980003 (Feb. 13, 1998)
NV980004 (Feb. 13, 1998)
NV980005 (Feb. 13, 1998)
NV980006 (Feb. 13, 1998)
NV980007 (Feb. 13, 1998)
NV980008 (Feb. 13, 1998)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage

Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 6th day of August 1998.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–21591 Filed 8–13–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

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)]. 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. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the "National Longitudinal Survey of Women."

A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the individual listed below in the Address section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section on or before October 13, 1998. BLS is particularly interested in comments which help the agency to:

- 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 b e 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.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue NE., Washington, DC 20212. Ms. Kurz can be reached on 202—606–7628 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey (NLS) of Women has been conducted since the later 1960's. Historically, the NLS of Women was collected as two surveys, the Survey of Work Experience for Mature Women and the Survey of Work Experience for Young Women. In 1995 the Bureau of the Census combined the mature and young women's cohorts into one panel.

The data collected in the NLS of Women will contribute to the knowledge about labor market processes involved in the work to retirement transition, and opportunities and services for women who desire to enter or re-enter the labor force. Survey data will contribute to the knowledge about women's ability to succeed in the job market and how their levels of success relate to educational attainment, vocational training, prior occupational experiences, general and job-specific experiences, and retirement decisions.

The NLS research contributes to the formation of national policy in the areas of education, training and employment programs, unemployment compensation, and social security benefits. In addition, members of the academic community publish articles and reports based on these NLS data for the Department of Labor (DOL) and other funding agencies. The DOL uses the measurement of changes in the labor market to design programs that would ease employment and unemployment problems. The survey design provides data gathered over time to form the only data set that contains this information. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policy-makers, and the DOL could not perform its policy- and report-making activities, as described above.

II. Current Actions

The 1999 NLS of Women will document work experience, labor force attachment, participation in educational or training programs, financial situations, health status, and health benefits. The survey data will identify any significant trends in the woman's work experience as a whole. The data will continue to include detailed information on the work history and pension coverage of respondents' husbands. In addition, the data will contain information on respondents who give (or receive) time or money to (or from) children.

Type of Review: Reinstatement, with change, of a previously-approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Women.

OMB Number: 1220–0110.

Affected Public: Individuals or households.

Total Respondents: 7,221.

Frequency: Biennially.

Total Responses: 7,221.

Average Time Per Response: 64.5 minutes.

Estimated Total Burden Hours: 7,762 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $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 also will become a matter of public record.

Signed at Washington, DC, this 11th day of August, 1998.

W. Stuart Rust, Jr.,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 98–21919 Filed 8–13–98; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (98–107)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that SynComm, Inc., of San Diego, CA, has applied for a partially exclusive license to practice the invention described and claimed in U.S. Patent No. 5,451,769 entitled, "CIRCULAR ELECTRODE GEOMETRY METAL-SEMICONDUCTOR-METAL PHOTODETECTORS," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by October 13, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Linda B. Blackburn, Patent Counsel, Langley Research Center, Mail Code 212, Hampton, VA 23681–0001; telephone (757) 864–3521; fax (757) 864–9190.

Dated: August 5, 1998.

Edward A. Frankle,

General Counsel.

[FR Doc. 98–21810 Filed 8–13–98; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Source Disconnects Resulting From Radiography Drive Cable Failures

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of NUREG–1631, "Source Disconnects Resulting from Radiography Drive Cable Failures," dated June 1998.

In late 1997, the NRC received a number of reports of industrial radiography system drive cable failures. All of the failures occurred immediately behind the male connector and appeared to be generic in nature. Although drive cable failures have occurred periodically within the industrial radiography industry, it was uncommon to experience so many apparently identical failures within such a brief period of time.

The apparent generic nature of the events, the potential for serious exposure to radiographers, and the possibility that the issue went beyond NRC jurisdiction thus affecting Agreement States warranted NRC's attention. As a result, a Special Team Inspection was initiated on December 22, 1997. The inspection involved interaction with three Agreement States including close coordination of inspection activities conducted within their jurisdiction. The involved Agreement States, (the Commonwealth of Massachusetts, and the States of Louisiana and Texas) took the lead role in their respective states, with NRC staff participating in all phases of the special inspection.

NUREG 1631 documents the results of this Special Team Inspection. This report describes the investigation of the initially reported drive cable failures, other failures identified during the inspection, the methodology used in the inspection, and presents the Team's findings, conclusions, and recommendations. Inspections were conducted at industrial radiography equipment manufacturing facilities and at selected industrial radiography licensees who had reportedly experienced drive cable failures. An inspection was also performed at the plant where the drive cable is manufactured.

A significant portion of this inspection focused on examining the drive cable. The carbon steel drive cable is an off-the-shelf component used by all radiography equipment manufacturers and has been provided to the radiography industry since the early 1960s. The cable is primarily used in the aerospace industry and the manufacturer found no similar failures reported in the aerospace applications.

Metallurgical analysis of the failed cables concluded these drive cable failures were due to a combination of wear, corrosion, and lack of lubrication, all indications of improper maintenance. The inspection identified several significant concerns regarding drive cable maintenance practices and identified several root causes, secondary causes, and contributing factors.

The inspection report contains several recommendations to the cable manufacturer, the radiography equipment manufacturers, radiography licensees, the radiography industry, and to regulatory agencies that license industrial radiography. These recommendations are aimed at improving the understanding of the drive cable's design and limitations and to encourage the development and use of appropriate procedures for the inspection, lubrication, and maintenance of drive cables to ensure that the cable may continue to be used safely for industrial radiography; and reduce the possibility of a serious radiation exposure as the result of a drive cable failure.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Camper, Mail StopTWFN 8–F–5, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7231; electronic mail address: lwc@nrc.gov.

Electronic Access

NUREG–1631 will be available electronically by visiting NRC's Home Page (http://www.nrc.gov/NRC/nucmat.html) approximately two weeks after the publication date of this notice.

Dated at Rockville, Maryland, this 23rd day of July, 1998.

For the Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Materials Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 98–21852 Filed 8–13–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Project No. 697]

Notice of Receipt of DOE Topical Report on Tritium Production Core

In order to maintain the strategic stockpile, the U.S. Department of Energy (DOE) is considering the use of commercial light-water reactors (CLWRs) to produce tritium. On July 30, 1998, DOE submitted a topical report to the U.S. Nuclear Regulatory Commission (NRC) entitled, "Tritium Production Core (TPC) Topical Report," that describes how the inclusion of significant numbers of tritium-producing burnable absorber rods (TPBARs) in the reactor core affects nuclear plant systems, safety and component analyses, and performance for a reference CLWR.

The NRC staff will prepare a safety evaluation on the DOE topical report to address, on a preliminary basis, the acceptability of irradiation of the proposed load of TPBARs in a CLWR. Upon completion of its evaluation, the staff will provide its conclusions to the Commission prior to issuance.

The staff plans to hold a public meeting to provide for public comment regarding the use of any particular facility for irradiation of TPBARs as proposed by DOE in the TPC topical report. The date and location of the meeting(s) will be announced later.

For Further Information Contact: J.H. Wilson at (301) 415–1108 or e-mail JHW1@nrc.gov.

For further details with respect to this action, see the DOE topical report submitted by letter dated July 30, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 6th day of August, 1998.

For the Nuclear Regulatory Commission.

Melinda Malloy,

Acting Chief, Generic Issues and Environmental Projects Branch, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–21851 Filed 8–13–98; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in August 1998. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in September 1998.

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

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (described in the statute and the regulation) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

For plan years beginning before July 1, 1997, the applicable percentage of the 30-year Treasury yield was 80 percent. The Retirement Protection Act of 1994 (RPA) amended ERISA section 4006(a)(3)(E)(iii)(II) to change the applicable percentage to 85 percent, effective for plan years beginning on or after July 1, 1997. (The amendment also provides for a further increase in the applicable percentage—to 100 percent—when the Internal Revenue Service adopts new mortality tables for determining current liability.)

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in August 1998 is 4.83 percent (*i.e.*, 85 percent of the 5.68 percent yield figure for July 1998).

(Under section 774(c) of the RPA, the amendment to the applicable percentage was deferred for certain regulated public utility (RPU) plans for as long as six months. The applicable percentage for RPU plans has therefore remained 80 percent for plan years beginning before January 1, 1998. For "partial" RPU plans, the assumed interest rates to be used in determining variable-rate premiums can be computed by applying the rules in § 4006.5(g) of the premium rates regulation. The PBGC's 1997 premium payment instruction booklet also describes these rules and provides a worksheet for computing the assumed rate.)

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between September 1997 and August 1998. The rates for September through December 1997 in the table (which reflect an applicable percentage of 85 percent) apply only to non-RPU plans. However, the rates for months after December 1997 apply to RPU (and "partial" RPU) plans as well as to non-RPU plans.

For premium payment years beginning in:	The assumed interest rate is:
September 1997	5.59
October 1997	5.53
November 1997	5.38
December 1997	5.19
January 1998	5.09
February 1998	4.94
March 1998	5.01
April 1998	5.06
May 1998	5.03
June 1998	5.04
July 1998	4.85
August 1998	4.83

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in September 1998 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 11th day of August, 1998.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–21850 Filed 8–13–98; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Alpha Industries, Inc., Common Stock, $.25 par Value) File No. 1–5560

August 10, 1998.

Alpha Industries, Inc. ("Company") has filed an application with the

Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security") from listing and registration on the American Stock Exchange, Inc. ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Company has been approved for quotation on the Nasdaq Stock Market National Market ("Nasdaq") and has filed a Registration Statement on Form 8–A registering the Security pursuant to section 12(g) of the Act. Registration became effective upon filing on May 29, 1998. Quotation of the Company's Security on Nasdaq commenced at the opening of business on June 2, 1998, and concurrently therewith, the Security was suspended from trading on the Amex.

The Company has complied with Rule 18 of Amex by filing with the Exchange a certified copy of resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing and registration on the Amex and by setting forth in detail to the Exchange the reasons for such proposed withdrawal and the facts in support therefore.

In making the decision to withdraw its Security from listing and registration on the Amex, the Company considered the enhanced value its shareholders would receive from quotation on Nasdaq and the direct and indirect costs and expenses associated with maintaining both the listing and registration of its Security on Amex and the quotation of its Security on Nasdaq. The Company does not see any particular advantage in both trading its stock on Amex and quoting its stock on Nasdaq and believes that this arrangement would fragment the market for its Security.

By letter dated May 22, 1998, the Exchange informed the Company that it had no objection to the withdrawal of the Company's Security from listing and registration on the Exchange.

The application relates solely to the withdrawal of the Security from listing on Amex and has no effect upon the continued quotation of the Security on Nasdaq.

By reason of Section 12 of the Act and the rules and regulations thereunder, the Company shall continue to be obligated to file reports under section 13 of the Act with the Commission and the Nasdaq.

Any interested person may, on or before August 31, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–21844 Filed 8–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23382; 812–10956]

The Expedition Funds and Compass Bank; Notice of Application

August 7, 1998.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") exempting applicants from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act exempting applicants from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: The requested order would permit non-money market series of The Expedition Funds ("Trust") to invest their uninvested cash in the money market series of the Expedition Funds in excess of the limits in section 12(d)(1)(A) of the Act.

APPLICANTS: Trust and Compass Bank ("Adviser").

FILING DATES: The application was filed on January 15, 1998, and amended on August 3, 1998. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 1, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company organized as a Massachusetts business trust and registered under the Act. The Trust currently offers a money market series (together with future money market series of the Trust, "Money Market Funds") and two non-money market series (together with future non-money market series of the Trust, "Non-Money Market Funds") (collectively, "Funds").[1] Each Money Market Fund is or will be subject to rule 2a–7 under the Act. The Adviser, an Alabama state banking corporation and a Federal Reserve System Member Bank, serves as investment adviser to the Trust. The Adviser, as a bank, is not required to register under the Investment Advisers Act of 1940.

2. Each Non-Money Market Fund has, or may be expected to have, cash balances not otherwise invested in portfolio securities ("Uninvested Cash") held by its custodian bank. Uninvested Cash may result from a variety of sources, including dividends or interest received from portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated

[1] Each existing Fund that currently intends to rely on the requested order has been named as an applicant. Any other existing Fund and any future Fund that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

redemptions and dividend payments, and new cash received from investors.

3. The Non-Money Market Funds wish to have the option of investing their Uninvested Cash in an amount of up to 25% of a Non-Money Market Fund's total assets in the Money Market Funds. Applicants believe that the proposed transactions may reduce custodian transaction costs and diversify risk across a wider range of short-term investments.

4. If a Money Market Fund offers more than one class of shares, each Non-Money Market Fund will invest only in the class with the lowest expense ratio at the time of investment. The shares of the Money Market Funds sold to and redeemed from the Non-Money Market Fund will not be subject to a sales load, redemption fee or distribution fee under a plan adopted in accordance with rule 12b–1 under the Act. To the extent that both a Money Market Fund and a Non-Money Market Fund charge a service fee (as defined in Rule 2830 of the Conduct Rules of the National Association of Securities Dealers (the "NASD"), the Money Market Fund will waive its service fee with respect to shares purchased by a Non-Money Market Fund or the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of service fee incurred by the Non-Money Market Fund.

5. Uninvested Cash will be invested in the Money Market Funds only when the investment will not disrupt the Money Market Funds and the Adviser reasonably believes that the Money Market Funds' return will be no less favorable than that of short-term debt instruments.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that a registered investment company may not acquire securities of another investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt any persons or transactions from section 12(d)(1) to the extent the exemption is consistent with the public interest and the protection of investors. Applicants request an order under section 12(d)(1)(J) to permit the Non-Money Market Funds to purchase shares of the Money Market Funds in excess of the limits in sections 12(d)(1)(A) and (B).

3. Applicants maintain that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to address. Shares of the Money Market Funds sold to or redeemed by the Non-Money Market Funds will not be subject to a sales load, redemption fee, or asset-based distribution fee, and, in accordance with condition 1, the Non-Money Market Funds will not pay duplicative service fees. When approving an investment advisory contract under section 15 of the Act, the board of trustees of a Non-Money Market Fund will consider to what extent the advisory fees paid by the Non-Money Market Fund to the Adviser should be reduced to account for the advisory fees paid by the Non-Money Market Fund as a shareholder in the Money Market Fund. Applicants also note that the net asset value of each Money Market Fund is and will be at a constant $1.00 per share. Therefore, applicants submit that the value of the investments in the Money Market Funds held by a Non-Money Market Fund will be easily determinable.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly controlling, controlled by, or under common control with such investment company. Because the Funds share a common investment adviser and a common board of trustees, each of the Funds may be deemed to be under common control with all the other Funds.

5. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each investment company concerned and the general purposes of the Act. Section 6(c) authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that such exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

6. Applicants request an exemption under sections 6(c) and 17(b) from section 17(a) to permit the sale of shares of the Money Market Funds to the Non-Money Market Funds and the redemption of these shares by the Money Market Funds. Applicants submit that the proposed transactions will not involve overreaching because the consideration paid and received for the sale and redemption of shares of the Money Market Funds by the Non-Money Market Funds will be based on the net asset value per share of the Money Market Funds. Applicants also state that the Non-Money Market Funds will retain their ability to invest their Uninvested Cash directly in short-term debt obligations if they so choose for any reason. Applicants also note that the Money Market Funds reserve the right to discontinue selling their shares to any of the Non-Money Market Funds if the board of trustees of a Money Market Fund determines that the sales would adversely affect the Money Market Fund's management and operations.

7. Section 17(d) of the Act and rule 17d–1 prohibit an affiliated person of a registered investment company, acting as principal, from participating in any joint arrangement with the investment company unless the SEC has issued an order authorizing the arrangement. Applicants believe that the Funds, by participating in the proposed transactions, and the Adviser, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1. Applicants request an order under section 17(d) and rule 17d–1 permitting the proposed transactions.

8. In determining whether to permit a transaction under rule 17d–1, the SEC considers whether the investment company's participation in the joint enterprise is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants. Applicants assert that participation by the Money Market Funds and the Non-Money Market Funds in the proposed transactions will be on the same basis and will be consistent with the policies and purposes of the Act.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The shares of the Money Market Funds sold to and redeemed from the Non-Money Market Funds will not be subject to a sales load, redemption fee or distribution fee under a plan adopted in accordance with rule 12b–1. To the extent that both a Money Market Fund and Non-Money Market Fund may charge a service fee (as defined in Rule 2830 of the NASD Conduct Rules), the Money Market Fund will waive its service fee with respect to shares purchased by a Non-Money Market Fund or the Adviser will waive its advisory fee for each Non-Money Market Fund in an amount that offsets the amount of the service fee incurred by the Non-Money Market Fund.

2. Before the next meeting of the board of trustees of the Non-Money Market Fund is held for the purpose of voting on an advisory contract under section 15 of the Act, the Adviser will provide the board of trustees with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Non-Money Market Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for a Non-Money Market Fund, the board of trustees, including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, shall consider to what extent, if any, the advisory fees charged to the Non-Money Market Fund by the Adviser should be reduced to account for the reduced services provided to the Non-Money Market Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. The Trust's minute books will record fully the board of trustees' consideration in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each Non-Money Market Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Non-Money Market Fund's aggregate investment in the Money Market Funds does not exceed 25% of the Non-Money Market Fund's total assets. For purposes of this limitation, each Non-Money Market Fund or series thereof will be treated as a separate investment company.

4. Investment in shares of the Money Market Funds will be in accordance with each Non-Money Market Fund's investment restrictions, and will be consistent with each Non-Money Market Fund's policies as set forth in its prospectus and statement of additional information.

5. The Non-Money Market Funds, the Money Market Funds, and any future Fund that may rely on the order shall be advised by the Adviser or a person controlling, controlled by or under common control with the Adviser.

6. No Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–21845 Filed 8:13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26902]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 7, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 1, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 1, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Cinergy Corp. (70–8867)

Cinergy Corp. ("Cinergy"), 139 East Fourth Street, Cincinnati, Ohio 45202, a registered holding company, has filed a post-effective amendment to its application filed under sections 9(a) and 10 of the Act and rule 54 under the Act.

By order dated August 28, 1996 (HCAR No. 26562) ("1996 Order"), Cinergy was authorized to acquire, from time to time through December 31, 2002 ("Authorization Period"), up to a 20% limited partnership interest in Nth Power Technologies Fund I, L.P. ("Fund"), a California limited partnership formed to invest in privately held energy technology companies, for a total investment of $10 million ("Original Investment Cap").

Cinergy now proposes to acquire an additional limited partnership interest for an additional investment of $3,303,000. Over the term of the Authorization Period, Cinergy would hold a 26.5% limited partnership interest in the Fund for a total investment of $13,303,000 ("Proposed Investment Cap").

Except to replace the Original Investment Cap with the Proposed Investment Cap, Cinergy states that it seeks no modifications to the terms and conditions of the 1996 Order. Cinergy's request arises from the default of one of the Fund's limited partners. The additional investment by Cinergy will be used to acquire a portion of the defaulted party's limited partnership interest.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–21814 Filed 8–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (ROHN Industries, Inc., Common Stock, $.01 Par Value) File No. 1–8009

August 10, 1998.

ROHN Industries, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security ("Security")

from listing and registration on the Chicago Stock Exchange, Inc. ("CHX" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

Holders of the Security are entitled to receive such dividends as are declared by the Board of Directors, to cast one vote for each share on all matters voted upon by common shareholders and, upon liquidation, to share ratably any assets available for distribution to them. Shares of the Security have no preemptive or conversion rights and such shares are not subject to any further calls or assessments.

It is the Company's understanding that the Security of the Company was initially listed on the CHX in 1989 to satisfy a requirement of a loan agreement. The loan has been satisfied and the requirement that the Security be listed on the CHX is no longer in existence. It also is the Company's understanding that no shares of the Security have been traded on the CHX since that listing began in 1989. As no shares of the Security are being traded on the CHX, it is the Company's view that there is no need to incur the cost of maintaining that listing.

In addition, the Security also is traded on the Nasdaq Stock Market, Inc. and the CHX. The Security will continue to be traded on the Nasdaq National Market tier of The Nasdaq Stock Market, Inc.

On February 13, 1998, the Company filed an application with CHX to withdraw the Company's Security from listing on that Exchange. By letter dated April 30, 1998, the CHX confirmed that the Company has complied with the rules of the Exchange with respect to the withdrawal of the Company's Security from listing.

Any interested person may, on or before August 31, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–21843 Filed 8–13–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–403111; International Series Release No. 1151; SR–EMCC–98–07]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of a Proposed Rule Change To Require Members To Maintain a Pre-Billing Deposit

August 7, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 24, 1998, Emerging Markets Clearing Corporation ("EMCC") 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 primarily by EMCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, EMCC will require each of its members to maintain a deposit with EMCC in an amount equal to three times the member's average monthly bill.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC 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. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, EMCC will require each member to maintain on deposit with EMCC an amount equal to three times the member's average monthly EMCC bill ("pre-bill amount"). The purpose of the pre-bill amount is to provide EMCC with additional operating cash. The average monthly bill will be based on a member's three most recent monthly EMCC bills, excluding all pass-through charges.[3] Members will continue to be billed monthly based on their actual use of EMCC's services.

The pre-bill amount will be recalculated quarterly. If a member's recalculated pre-bill amount is greater than its prior pre-bill amount, the amount of such difference will appear on the member's next monthly bill as an additional charge. Conversely, if a member's recalculated pre-bill amount is less than its prior pre-bill amount, the amount of such difference will appear on the member's next monthly bill as a credit. Within forty-five days of December 31st of each year, EMCC will provide each member with a statement reflecting the member's pre-bill amount on deposit with EMCC as of December 31st.

EMCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder since it will facilitate the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

[1] 15 U.S.C. 78s(b)(1).

[2] The commission has modified the text of the summaries prepared by EMCC.

[3] If a member does not have a three month billing history (e.g., a new member), EMCC will estimate the member's average monthly bill in calculating the pre-bill amount.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Withing thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which EMCC 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. 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 available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–98–07 and should be submitted by September 4, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–21846 Filed 8–13–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12)

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Pub. L. 104–13; Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for Office of Management and Budget (OMB) Review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than September 14, 1998.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Power Distributors Monthly and Annual Reports to TVA.

Type of Affected Public: Business or local government.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 2,067.

Estimated Total Annual Burden Hours: 3,816.

Estimated Average Burden Hours Per Response: 1.8.

Need For and Use of Information: This information collection supplies TVA with financial and accounting information to help ensure that electric power produced by TVA is sold to consumers at rates which are as low as feasible.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 98–21830 Filed 8–13–98; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Manchester Airport, Manchester, NH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 14, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred Testa, Jr., Airport Director for Manchester Airport at the following address: Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire, 03103.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Manchester under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a Passenger Facility Charge (PFC) at Manchester Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 5, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Manchester was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than November 3, 1998.

The following is a brief overview of the impose and use application.

PFC Project #: 98–08–C–00–MHT.

Level of the proposed PFC: $3.00.

Charge effective date: October 1, 2016.

Estimated charge expiration date: April 1, 2017.

Estimated total net PFC revenue: $2,978,000.

Brief description of project: Relocate Kelly Avenue.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Manchester Airport, One Airport Road, Suite 300, Manchester, New Hampshire 03103.

Issued in Burlington, Massachusetts on August 6, 1998.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 98–21865 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–17–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Victoria Regional Airport, Victoria, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Victoria Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 14, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Patrick Rhodes, Manager of Victoria Regional Airport at the following address: Mr. Patrick Rhodes, Airport Manager, Victoria Regional Airport, 609 Foster Field Drive, Victoria, Texas 77904.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Guttery, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, Fort Worth, Texas 76193–0610, (817) 222–5614.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Victoria Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 4, 1998, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of Section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 27, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 1998.

Proposed charge expiration date: November 1, 2001.

Total estimated PFC revenue: $188.872.

PFC application number: 98–02–C–00–VCT.

Brief description of proposed projects:

Projects To Impose and Use PFC's

Airfield Drainage Improvements (Phase 1) and Upgrade Airfield Guidance Sign System, Airport Master Plan, Drainage Improvements (Phase 2), Airport Entrance Road and Terminal Access Road, Joint Seal/Pavement Repair/Mark Runways 12L/3OR and Runway 17/35 and Taxiways A, B, C, and F, and Rehab Runway Lighting Runway 12L/35R.

Proposed class or classes of air carriers to be exempted from collecting PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610D, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Victoria Regional Airport.

Issued in Fort Worth, Texas on August 4, 1998.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 98–21862 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Washington and Benton Counties, Arkansas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Washington and Benton Counties, Arkansas.

FOR FURTHER INFORMATION CONTACT: Elizabeth Romero, Environmental Specialist, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201–3298, Telephone: (501) 324–6430; or Brenda Price, Environmental Scientist, Environmental Division, Arkansas State Highway and Transportation Department, Post Office Box 2261, Little Rock, Arkansas 72203, Telephone (501) 569–2281.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the

Arkansas State Highway and Transportation Department, will prepare an environmental impact statement (EIS) on a proposal for an improved transportation facility in the Springdale vicinity. The proposal includes several alternatives based on new location corridors and varying termini as well as reconstructing the existing. The approximate length is 27 kilometers (17 miles). This facility would serve northern Washington County and southern Benton County, including Springdale, Tontitown, Bethel Heights, Elm Springs, and Lowell. It will also provide improved access to the Northwest Regional Airport.

The proposed improvements would improve the capacity of the existing route and increase regional mobility along a proposed ultimate east-west route extending from Missouri to Oklahoma. A new location alternative facility would bypass the rapidly growing urban center of Springdale, with its subsequent traffic congestion. The eastern terminus of the proposed improvements will connect to the five-lane U.S. 412 currently under construction just east of Springdale. The western terminus will connect to the existing five-lane U.S. 412 west of Tontitown.

There are no east-west arterials north of existing U.S. Highway 412 across northern Washington County or southern Benton County. The increased development in the area necessitate the prompt identification of the facility alignment so that right-of-way may be preserved.

Alternatives to be considered are:

1. The "Do-Nothing" Alternative where roads are constructed according to the regional plans with the exception of the proposed facility;

2. The "Reconstruction" Alternative where roads on the regional plan are upgraded to handle traffic forecast for the proposed facility, but with less than full control of access;

3. The "New Location" Alternative, considering several different alignments and full control of access.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies and to private organizations, including conservation groups and groups of individuals who have expressed interest in the project in the past and to major Arkansas newspapers. A series of public involvement sessions will be held in the areas to be affected. In addition, a public hearing(s) and a formal scoping meeting(s) will be held. Dates and locations for the meetings will be determined as the project progresses. Public notice will be given of the time and place of the meetings. The draft EIS will be available for public and agency review and comments prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistant Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Elizabeth Romero,

Environmental Specialist, Federal Highway Administration, Little Rock, Arkansas.

[FR Doc. 98–21892 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects. Further, the notice requests suggestions for topics to be presented by the agency.

DATES AND TIMES: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on September 17, 1998, beginning at 1:30 p.m. and ending at approximately 5:00 p.m. The deadline for interested parties to suggest agenda topics is 4:15 p.m. on August 28, 1998. Questions may be submitted in advance regarding the agency's research and development projects. They must be submitted in writing by September 2, 1998, to the address given below. If sufficient time is available, questions received after the September 2 date will be answered at the meeting during the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of answers to questions submitted by September 2 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, VA. Suggestions for specific R&D topics as described below and questions for the September 17, 1998, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., S.W., Washington, DC 20590. The fax number is (202) 366–5930.

SUPPLEMENTARY INFORMATION: In recent years, since April 1993, NHTSA has provided detailed information about its research and development programs in presentations at a series of public meetings. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This is the twenty-first meeting in that series, and it will be held on September 17, 1998, at the Tysons Westpark Hotel, McLean, Virginia.

NHTSA requests suggestions from interested parties on the specific agenda topics to be presented. NHTSA will base its decisions about the agenda, in part, on the suggestions it receives by close of business at 4:15 p.m. on August 28, 1998. Before the meeting, it will publish a notice with an agenda listing the research and development topics to be discussed. The agenda can also be obtained by calling or faxing the information numbers listed elsewhere in this notice or from NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/. NHTSA asks that the suggestions be limited to six, in priority order, so that the presentations at the September 17 R&D meeting can be most useful to the audience. Specific R&D topics are listed below. Many of these topics have been discussed at previous meetings. Suggestions for agenda topics are not restricted to this listing, and interested parties are invited to suggest other R&D topics of specific interest to their organizations. Additionally, if any interested parties would like to make a presentation regarding technical issues concerning any of NHTSA's research programs, information concerning the proposed topic and speaker should be submitted in writing by close of business August 28, 1998.

Specific R&D topics are:

Fiscal Year 1999 R&D Research Efforts,

International Harmonized Research Activities (IHRA),

On-line tracking system for NHTSA's research projects, and
Crash Injury Research and Engineering Network (CIREN).

Specific Crashworthiness R&D topics are:

Status of advanced air bag research,
Demonstration of CD ROM for child restraint/vehicle compatibility,
Preparation of new dummies for assessment of advanced air bag technology,
Status of research on restraint systems for rollover protection,
Improved frontal crash protection (program status, problem identification, offset testing),
Advanced glazing research,
Vehicle aggressivity and fleet compatibility,
Upgrade side crash protection,
Upgrade seat and occupant restraint systems,
Child restraint/air bag interaction (CRABI) dummy testing,
Truck crashworthiness/occupant protection,
National Transportation Biomechanics Research Center (NTBRC),
Head and neck injury research,
Lower extremity injury research,
Thorax injury research,
Human injury simulation and analysis,
Refinements to the Hybrid III dummy, and
Advanced frontal test dummy.

Specific Crash Avoidance R&D topics are:

National Advanced Driving Simulator (NADS),
Intelligent vehicle initiative,
Status and plans for anti-lock brake system (ABS) research and testing,
Human factors guidelines for crash avoidance warning devices,
Drowsy driver monitoring,
Driver workload assessment,
Rearend collision avoidance system guidelines,
Road departure collision avoidance system guidelines,
Intersection collision avoidance system guidelines,
Lane change/merge collision avoidance system guidelines.

National Center for Statistics and Analysis (NCSA) topic is:

Special crash investigation studies of air bag cases.

Separately, questions regarding research projects that have been submitted in writing not later than close of business on September 2, 1998, will be answered. The summary minutes of the meeting, copies of materials handed out at the meeting, and answers to the questions submitted for response at the meeting will be available for public inspection in the DOT Docket in Washington, DC, within 3 weeks after the meeting. Copies of this material will then be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, S.W., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The summary minutes, handouts, and answers to the questions will also be available on NHTSA's Web site under Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons on (202) 366–4862 or by telefax on (202) 366–5930 by close of business September 4, 1998.

FOR FURTHER INFORMATION CONTACT: Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4862. Fax number: (202) 366–5930.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 98–21842 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–98–3891; Notice 14]

Pipeline Safety: Mobil Pipe Line Company Approved for Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice of risk demonstration project approval and finding of no significant impact.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) has issued a Risk Management Demonstration Project Order authorizing Mobil Pipe Line Company to participate in the Pipeline Risk Management Demonstration Program. OPS has also made a finding that Mobil's demonstration project will have no significant impacts on the environment.

ADDRESSES: Comments on this or any other demonstration project will be accepted in the Docket throughout the 4-year demonstration period. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number RSPA–98–3891. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed online at the DOT Docket Management System website at http://dms.dot.gov/.

SUPPLEMENTAL INFORMATION:

Project Authorization: On August 10, 1998, OPS, pursuant to 49 U.S.C. 60126, issued Mobil a Risk Management Demonstration Project Order authorizing Mobil to conduct a risk management project at Mobil's Patoka, Illinois crude breakout tank facility located within the city limits of Vernon, Illinois. OPS has determined, after a comprehensive review of Mobil's demonstration project, that the project is expected to provide superior safety.

More detailed descriptions of all aspects of the Mobil demonstration project, including the OPS rationale for approving the project, are available in the following documents:

(1) 63 FR 36024, "Pipeline Safety: Intent To Approve Project and Environmental Assessment for the Mobil Pipe Line Company Pipeline Risk Management Demonstration Program", July 1, 1998.

(2) "Demonstration Project Prospectus: Mobil Pipe Line Company; Site: Patoka, Illinois", available by contacting Elizabeth M. Callsen at 202–366–4572. Includes a map showing the demonstration site.

(3) "Mobil Pipe Line Company—Application for DOT-OPS Risk Management Demonstration Program", available in Docket No. RSPA–98–3891 at the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400

Seventh Street, SW, Washington, DC 20590–0001, (202) 366–5046.

(4) "OPS Project Review Team Evaluation of Mobil Demonstration Project".

(5) "Risk Management Demonstration Project Order" for Mobil Pipe Line Corporation, August 10, 1998.

These documents and other information pertaining to the Mobil project are accessible to the public via the Pipeline Risk Management Information System (PRIMIS), on the OPS Home Page at http://ops.dot.gov.

Finding of No Significant Impact (FONSI): OPS has reviewed Mobil's project for conformity with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality implementing regulations (40 CFR 1500–1508), and Department of Transportation Order 5610.1c, Procedures for Considering Environmental Impacts. OPS conducted an Environmental Assessment of Phillips' project (63 FR 36024, "Pipeline Safety: Intent To Approve Project and Environmental Assessment for the Phillips Pipe Line Company Pipeline Risk Management Demonstration Program", July 1, 1998).

OPS received no public comment on the Environmental Assessment.

Based on the analysis and conclusions reached in the Environmental Assessment and the analyses conducted in the above-listed documents, OPS has found that there are no significant impacts on the environment associated with this action. The Environmental Assessment and the other above-listed documents are incorporated by reference into this FONSI. To summarize, the reason that the project will not have a significant effect on the human environment is that the project as now defined requires no regulatory exemption. This project is expected to demonstrate that risk management techniques can be successfully applied toward achieving superior safety and environmental protection at a tank facility. All activities to be performed by Mobil as part of the demonstration project, including investigating the specific ways that leaks or ruptures could possibly occur within the Patoka facility, taking into account the specific characteristics of the site in determining the potential safety and environmental impacts of such events, defining the most effective means of minimizing the likelihood and consequences of such events, and quantitatively validating its overall approach, exceed what is currently required by pipeline safety regulations. This rationale is further discussed in the Environmental Assessment referenced above.

Issued in Washington, DC on August 11, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety, Office of Pipeline Safety.

[FR Doc. 98–21840 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA), DOT

[Docket No. RSPA–98–3892; Notice 15]

Pipeline Safety: Phillips Pipe Line Company Approved for Pipeline Risk Management Demonstration Program

AGENCY: Office of Pipeline Safety, DOT.

ACTION: Notice of risk demonstration project approval and finding of no significant impact.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) has issued a Risk Management Demonstration Project Order authorizing Phillips Pipe Line Company to participate in the Pipeline Risk Management Demonstration Program. OPS has also made a finding that Phillips' demonstration project will have no significant impacts on the environment.

ADDRESSES: Comments on this or any other demonstration project will be accepted in the Docket throughout the 4-year demonstration period. Comments should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, or you can E-Mail your comments to ops.comments@rspa.dot.gov. Comments should identify the docket number RSPA–98–3892. Persons should submit the original comment document and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a self-addressed stamped postcard. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Elizabeth Callsen, OPS, (202) 366–4572, regarding the subject matter of this notice. Contact the Dockets Unit, (202) 366–5046, for docket material. Comments may also be reviewed online at the DOT Docket Management System website at http://dms.dot.gov/.

SUPPLEMENTAL INFORMATION:

Project Authorization: On August 10, 1998, OPS, pursuant to 49 U.S.C. 60126, issued Phillips a Risk Management Demonstration Project Order authorizing Phillips to conduct a risk management project on a 60-mile pipeline segment of two pipelines of the Phillips-operated pipeline system. OPS has determined, after a comprehensive review of Phillips' demonstration project, that the project is expected to provide superior safety.

More detailed descriptions of all aspects of the Phillips demonstration project, including the OPS rationale for approving the project, are available in the following documents:

(1) 63 FR 36024, "Pipeline Safety: Intent To Approve Project and Environmental Assessment for the Phillips Pipe Line Company Pipeline Risk Management Demonstration Program", July 1, 1998.

(2) "Demonstration Project Prospectus: Phillips Pipe Line Company; Texas Gulf Coast Region", available by contacting Elizabeth M. Callsen at 202–366–4572. Includes a map of the demonstration segments.

(3) "Phillips Pipe Line Company—Application for DOT–OPS Risk Management Demonstration Program", available in Docket No. RSPA–98–3892 at the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–5046.

(4) "OPS Project Review Team Evaluation of Phillips Demonstration Project".

(5) "Risk Management Demonstration Project Order" for Phillips Pipe Line Corporation, August 10, 1998.

These documents and other information pertaining to the Phillips project are accessible to the public via the Pipeline Risk Management Information System (PRIMIS), on the OPS Home Page at http://ops.dot.gov.

Finding of No Significant Impact (FONSI): OPS has reviewed Phillips' project for conformity with section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4332), the Council on Environmental Quality implementing regulations (40 CFR 1500–1508), and Department of Transportation Order 5610.1c, Procedures for Considering Environmental Impacts. OPS conducted an Environmental Assessment of Phillips' project (63 FR 36024, "Pipeline Safety: Intent To Approve Project and Environmental Assessment for the Phillips Pipe Line Company Pipeline

Risk Management Demonstration Program", July 1, 1998).

OPS received no public comment on the Environmental Assessment.

Based on the analysis and conclusions reached in the Environmental Assessment and the analyses conducted in the above-listed documents, OPS has found that there are no significant impacts on the environment associated with this action. The Environmental Assessment and the other above-listed documents are incorporated by reference into this FONSI. To summarize, the reason that the project will not have a significant effect on the human environment is that the project as now defined requires no regulatory exemption. This project is expected to demonstrate that risk management techniques can be successfully applied toward improving excavation safety. All activities to be performed by Phillips as part of the demonstration project, including performing excavation risk assessments, developing a work plan for each excavation project, taking appropriate emergency response precautions, appropriately coordinating with emergency response personnel, and quantitatively validating its overall approach, exceed what is currently required by pipeline safety regulations. This rationale is further discussed in the Environmental Assessment referenced above.

Issued in Washington, DC on August 11, 1998.

Richard B. Felder,

Associate Administrator, Office of Pipeline Safety.

[FR Doc. 98–21841 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 12:00 p.m., on Monday, August 24, 1998, at the Corporation's Administration Building, 180 Andrews Street, Massena, New York. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than August 20, 1998, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on August 10, 1998.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 98–21839 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–61–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20926]

Coach USA, Inc.—Control—Brunswick Transportation Company d/b/a The Maine Line, et al.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: Coach USA, Inc. (Coach or applicant), a noncarrier, filed an application under 49 U.S.C. 14303 to acquire control of Brunswick Transportation Company d/b/a The Maine Line (Maine Line); Mini Coach of Boston (Mini Coach); Olympia Trails Bus Co., Inc. (Olympia); Stardust Tours, Inc. d/b/a Gray Line Tours of Memphis (Gray Line); and Valen Transportation, Inc. (Valen), all motor carriers of passengers. Persons wishing to oppose the application must follow the rules under 49 CFR part 1182, subparts B and C. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by September 28, 1998. Applicant may file a reply by October 13, 1998. If no comments are filed by September 28, 1998, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20926 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicant's representatives: Betty Jo Christian and David H. Coburn, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach currently controls 54 motor passenger carriers.[1] In this transaction, it seeks to acquire direct control of Maine Line,[2] Mini Coach,[3] Olympia,[4] Gray Line,[5] and

[1] In addition to the instant application, Coach has two other pending control applications: *Coach USA, Inc.—Control—Konsas City Executive Coach, Inc. and Le Bus, Inc.*, STB Docket No. MC–F–20923 (STB served July 24, 1998), in which it seeks to acquire control of two additional motor passenger carriers; and *Coach USA, Inc.—Control—Chenango Valley Bus Lines, Inc.; Colonial Coach Corp.; GL Bus Lines, Inc.; Gray Line Air Shuttle, Inc.; Gray Line New York Tours, Inc.; Hudson Transit Corporation; Hudson Transit Lines, Inc.; and International Bus Services, Inc.*, STB Docket No. MC–F–20927 (filed July 31, 1998), in which it seeks to acquire control of eight additional motor passenger carriers.

[2] Maine Line is a Maine corporation. It holds federally issued operating authority in Docket No. MC–109495 under which it provides charter and special operations between points in the United States and regular route operations in New England. It also holds authority from the State of Maine to conduct intrastate operations in that state. It operates a fleet of approximately 49 vehicles and employs approximately 85 people. Maine Line's gross revenue for fiscal year (FY) 1997 was approximately $8.2 million. Prior to the transfer of its stock into a voting trust, it was owned by Robert J. Ouellette, Albert Z. Ouellette, Giles J. Ouellette, Joel D. Ouellette, Michael D. Ouellette, Dennis R. Ouellette, and Catherine Ouellette-Carlton.

[3] Mini Coach is a Massachusetts corporation. It holds federally issued operating authority in Docket No. MC–231090 under which it provides charter and special operations beginning and ending at Medford, MA, and extending to points in the United States (except Alaska and Hawaii). It operates a fleet of 12 motorcoaches and 19 minibuses and vans and employs 70 people. Mini Coach's gross revenue for FY 1997 was approximately $3.8 million. Prior to the transfer of its stock into voting trust, it was owned by Steven and Lori Bauld.

[4] Olympia is a New Jersey corporation. It holds federally issued operating authority in Docket No. MC–138146 under which it provides charter and special operations between points in the United States and regular-route service between points in New York and New Jersey. It also holds authority from the State of New York and the State of New Jersey to conduct intrastate operations in those states. It operates a fleet of 56 buses and 4 vans and employs 130 people on a full time basis and 30 people part time. Olympia's gross revenue for FY 1997 was approximately $16.5 million. Prior to the transfer of its stock into voting trust, it was owned by Nikolas Agathis, Sophia Agathis, William T. Agathis, Michael E. Agathis, and Nicholas C. Agathis.

[5] Gray Line is a Tennessee corporation. It holds federally issued operating authority in Docket No. MC–318341 under which it provides charter and special operations, as well as authority from the Tennessee Department of Safety to conduct intrastate operations in that state. It operates a fleet of 6 minibuses and 1 van and employs 12 people. Gray Line's gross revenue for FY 1997 was approximately $580,000. Prior to the transfer of its stock into voting trust, it was owned by John N. Fain, Jr.

Valen [6] through the acquisition all of their outstanding stock.

Applicant submits that there will be no transfer of any federal or state operating authorities held by the acquired carriers. Following the consummation of the control transaction, these carriers will continue operating in the same manner as before, and, according to applicant, granting the application will not reduce competitive options available to the traveling public. Applicant asserts that the acquired carriers do not compete with one another, to any meaningful degree. Applicant submits that each of the acquired carriers is relatively small and that each faces substantial competition from other bus companies and transportation modes.

Applicant also submits that granting the application will produce substantial benefits, including interest cost savings from the restructuring of debt and reduced operating costs from Coach's enhanced volume purchasing power. Specifically, applicant claims that each carrier to be acquired will benefit from the lower insurance premiums negotiated by Coach and from volume discounts for equipment and fuel. Applicant indicates that Coach will provide each carrier to be acquired with centralized legal and accounting functions and coordinated purchasing services. In addition, applicant states that vehicle sharing arrangements will be facilitated through Coach to ensure maximum use and efficient operation of equipment, and that coordinated driver training services will be provided. Applicant also states that the proposed transaction will benefit the employees of the acquired carriers and that all collective bargaining agreements will be honored by Coach.

Coach plans to acquire control of additional motor passenger carriers in the coming months. It asserts that the financial benefits and operating efficiencies will be enhanced further by these subsequent transactions. Over the long term, Coach states that it will provide centralized marketing and reservation services for the bus firms that it controls, thereby further enhancing the benefits resulting from these control transactions.

Applicant certifies that: (1) Maine Line, Olympia. and Valen hold satisfactory safety ratings from the U.S. Department of Transportation, while Mini Coach holds a conditional safety rating and Gray Line has not been rated; (2) each of the acquired carriers maintains sufficient liability insurance; (3) none of the acquired carriers is domiciled in Mexico nor owned or controlled by persons of that country; and (4) approval of the transaction will not significantly affect either the quality of the human environment or the conservation of energy resources. Additional information may be obtained from applicant's representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the application, we find that the proposed acquisition of control is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and a procedural schedule will be adopted to reconsider the application. If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisition of control is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on September 28, 1998, unless timely opposing comments are filed.

4. A copy of this notice will be served on the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530.

Decided: August 7, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–21935 Filed 8–13–98; 8:45 am]

BILLING CODE 4915–00–P

[6] Valen is a California corporation. It holds federally issued operating authority in Docket No. MC–212398 which includes regular-route authority between points in California, Nevada and Arizona, as well as authority from the California Public Utilities Commission to conduct intrastate operations in that state. It operates a fleet of approximately 5 motorcoaches and other vehicles. Valen's gross revenue for FY 1997 was approximately $2.5 million. Prior to the transfer of its stock into voting trust, it was owned by Michael L. Valen, Michaeleen Valen, Bipinchandra M. Ramaiya, and Marguerite L. Skinner.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33556] [1]

Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Decision No. 6 in STB Finance Docket No. 33556; Notice of Acceptance of Primary Application and Related Filing; Issuance of Final Procedural Schedule.

SUMMARY: The Board is accepting for consideration the primary application and related filing filed July 15, 1998, by Canadian National Railway Company (CNR), Grand Trunk Corporation (GTC), and Grand Trunk Western Railroad Incorporated (GTW),[2] Illinois Central Corporation (IC Corp.), Illinois Central Railroad Company (ICR), Chicago, Central and Pacific Railroad Company (CCP), and Cedar River Railroad Company (CRRC).[3] The primary application seeks Surface Transportation Board (Board) approval and authorization under 49 U.S.C. 11321–26 for: (1) the acquisition of control, by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of control of IC Corp. and through it of ICR and its railroad affiliates, and (2) for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates. The related filing, an application for terminal trackage rights,

[1] This decision covers: (i) the primary application, which was filed in the STB Finance Docket No. 33556 lead docket; and (ii) one related filing, an application for terminal trackage rights in Springfield, IL, filed in the embraced docket, STB Finance Docket No. 33556 (Sub-No. 1), *Canadian National Railway Company, Illinois Central Railroad Company, The Kansas City Southern Railway Company, and Gateway Western Railway Company—Terminal Trackage Rights—Union Pacific Railroad Company and Norfolk & Western Railway Company.*

[2] CNR, GTC, and GTW, and their affiliates, are referred to collectively as CN.

[3] IC Corp., ICR, CCP, and CRRC, and their affiliates, are referred to collectively as IC. CN and IC are referred to collectively as applicants.

seeks related relief contingent upon approval of the primary application.

Having received public comments on the proposed procedural schedule, as modified by the Board, and applicants' reply to those comments, the Board is issuing a final procedural schedule. This schedule provides for the issuance of a final decision no later than May 11, 1999 (300 days after the primary application's filing date of July 15, 1998).

DATES: The effective date of this decision is August 14, 1998. Any party who wishes to participate in this proceeding as a party of record must file, no later than August 31, 1998, a notice of intent to participate. Descriptions of responsive (including inconsistent) applications, and petitions for waiver or clarification regarding those applications, must be filed by August 31, 1998. All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application, including filings by the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (DOT), and responsive (including inconsistent) applications must be filed by October 13, 1998. Response to comments, protests, requested conditions, and other opposition, response to comments of DOJ and DOT, rebuttal in support of the primary application and related application, and response to inconsistent and responsive applications, must be filed by November 27, 1998. For further information respecting dates, see Appendix A (Final Procedural Schedule).

ADDRESSES: Send an original and 25 copies of all pleadings referring to STB Finance Docket No. 33556 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001.[4] In addition, one copy of all documents in this proceeding must be sent to Administrative Law Judge David Harfeld, Federal Energy Regulatory Commission, Office of Administrative Law Judges, 888 First Street, N.E., Suite 11F, Washington, DC 20426 [(202) 219–2514; FAX: (202) 219–3289] and to each of applicants' representatives: (1) Paul A. Cunningham, Esq., Harkins Cunningham, 1300 19th Street, NW., Suite 600, Washington, DC 20036–1609; and (2) William C. Sippel, Esq., Oppenheimer Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710.

In addition to submitting an original and 25 copies of all paper documents filed with the Board, parties also must submit, on 3.5-inch IBM-compatible floppy diskettes (disks) or compact discs (CDs), copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1–2–3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. A copy of each disk or CD submitted to the Board should be provided to any other party upon request.[5] Further details are discussed below.

FOR FURTHER INFORMATION CONTACT: Julia M. Farr, (202) 565–1613. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Applicants are seeking approval of a proposed transaction set forth in their primary application (CN/IC–6) filed on July 15, 1998. The proposed transaction involves the acquisition of control by CNR, through its indirect wholly owned subsidiary Blackhawk Merger Sub, Inc., of IC Corp., and through it of ICR and its railroad affiliates, and for the resulting common control by CNR of GTW and its railroad affiliates and ICR and its railroad affiliates.

The Applicants

CN's rail network consists of approximately 1,150 route miles in the United States, and approximately 14,150 route miles in eight Canadian provinces. CN has principal routes to every major metropolitan area in Canada, and the major U.S. cities of: Buffalo, NY; Detroit, MI; Duluth, MN/Superior, WI; and Chicago, IL. The eastern terminus of CN's network is Halifax, Nova Scotia; the western termini are Prince Rupert and Vancouver, British Columbia; and the southern terminus is Chicago. CN's traffic, between Duluth/Superior and Chicago, is carried under haulage agreements over the lines of The Burlington Northern and Santa Fe Railway Company (BNSF) and Wisconsin Central Ltd. (WC).

IC operates approximately 3,370 route miles of track running north-south between Chicago and the Gulf of Mexico, and east-west between Chicago and Nebraska and Iowa. IC's main north-south route reaches every major metropolitan area on the Mississippi River, including Chicago, IL; St. Louis, MO; Memphis, TN; Jackson, MS; and New Orleans, LA. IC's east-west route extends from Sioux City and Council Bluffs, IA, in the West to Chicago in the East.

The principal routes of the combined CN/IC rail system would be identical to those of the individual railroads. The southern terminus of CN's rail system, Chicago, is the northern terminus of IC's rail system. Applicants state that no track redundancies would be created by the transaction, and no abandonments or substantial rerouting would result from the combination of the two systems.

Tender Offer and Merger

According to applicants, on February 10, 1998, CN, Blackhawk Merger Sub, Inc. (Merger Sub), and IC entered into an Agreement and Plan of Merger (as subsequently amended, the Merger Agreement). In accordance with the Merger Agreement, as of March 14, 1998, the CNR acquired 46,051,761 shares (or approximately 75%) of the outstanding common stock of IC (the IC Common Shares), at a price of $39.00 per share[6] through a cash tender offer (the Tender Offer) by Merger Sub. On June 4, 1998, CN consummated a second-step merger (the Merger) between IC and Merger Sub, with IC being the surviving corporation. In the Merger, the remaining 25% of outstanding IC Common Shares were exchanged for approximately 10.1 million common shares of CN, representing 10.3% of the outstanding common shares of CN after the Merger on a fully diluted basis. As a result of the Tender Offer and the Merger, CN became the indirect beneficial owner of all of the stock of IC.

Voting Trust

Applicants state that, in accordance with the Merger Agreement, the shares acquired by CN in the Tender Offer and

[4] In order for a document to be considered a formal filing, the Board must receive an original and 25 copies of the document, which must show that it has been properly served. In addition, each formal filing must be accompanied by an electronic submission per our requirements as discussed in detail in this decision. Parties must clearly label each formal filing with an identification acronym and number. *See* 49 CFR 1180.4(a)(2). Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, and labeled as containing confidential or redacted materials. Documents transmitted by facsimile (FAX) will not be considered formal filings and are not encouraged because they will result in unnecessarily burdensome, duplicative processing.

[5] In Decision No. 3 (served May 19, 1998, and published on May 22, 1998, in the **Federal Register** at 63 FR 28442–44), we denied a petition for reconsideration of Decision No. 2, concerning the requirement that parties submit copies of all textual materials on disks or CDs, and stated that parties may individually seek a waiver from the disk-CD requirement.

[6] Applicants stated that all monetary amounts listed in the application are stated in U.S. dollars, unless otherwise noted.

in the Merger are held in a voting trust (the Voting Trust) pursuant to an agreement dated as of March 13, 1998, by and among CN, Merger Sub, and The Bank of New York, a voting trustee that is a banking corporation (the Trustee). The Trustee will act by written consent or will vote all IC stock held by the Voting Trust (the Trust Stock) in favor of any proposal necessary to effectuate the Merger pursuant to the Merger Agreement, and, generally so long as the Merger Agreement is in effect, against any other proposed merger, business combination, or similar transaction involving IC. On other matters, including the election or removal of officers, the Trustee generally will vote the Trust Stock in the Trustee's sole discretion unless the holder(s) of trust certificates, with the prior written approval of the Board, directs the Trustee as to any such vote. GTC, a wholly owned subsidiary of CN, currently holds the trust certificate for all IC stock in the Voting Trust.

On February 25, 1998, CN received an informal opinion from the Board's staff to the effect that CN's use of the Voting Trust will be consistent with the Board's policies and will preclude unlawful control of IC by CN.

Related United Transportation Union (UTU) Filing

On July 16, 1998, UTU filed a Motion to Dismiss and Comment on the Procedural Schedule (UTU–3). UTU is the designated representative for various crafts or classes of operating employees on ICR and GTW. The request for dismissal is based upon the ground that these carriers have violated 49 U.S.C. 11323 by effectively merging the properties of these two carriers into one corporation for the management and operation of the previously separately owned properties without the approval or authorization of the Board. UTU further states that IC and CN have violated section 11323 by beginning to coordinate the labor relations functions of these two large carriers without prior approval.

On August 5, 1998, applicants filed a Reply to UTU's Motion to Dismiss (CN/IC–12). Applicants state that: (1) UTU has raised no issue supporting a conclusion that CN may have engaged in unlawful control of IC, and that, even if the particular conduct UTU alleges occurred, it would amount to no more than necessary and proper communication and coordination between merging railroads; (2) UTU has cited no legal authority for its basic premise that the exchange of information it alleges constitutes improper conduct or evidence of unlawful control, and that publicly held railroads negotiating a potential merger agreement are entitled to engage in appropriate due diligence inquiries about each other, as required by the Board's rules and decisions, and as contemplated by the Board's protective order;[7] and (3) even if UTU's motion alleged an arguable control violation, it would not warrant dismissal, and that such a violation could not warrant denial of the application unless it were so serious and substantial that it clearly outweighed other public interest factors, which UTU has not alleged or shown. Applicants request that the Board should deny UTU's motion as being substantively without merit, both factually and legally, and procedurally flawed.

The Board shares UTU's concerns that there not be management or operations in common between railroad entities absent our approval of the common management or operations. Here, however, the applicants have satisfactorily addressed the matters raised by UTU and the factors described do not demonstrate unlawful control. Nor does the structure of the proposed arrangement reflect unauthorized common control of two or more carriers. As previously mentioned, by letter dated February 25, 1998, the Board's staff issued an informal opinion concerning a Voting Trust Agreement (VTA) proposed to be entered into by and between CNR, Merger Sub, and a Trustee, and found that the VTA provided for the placement, into an independent and irrevocable voting trust, of all of the common stock of IC Corp. acquired by CN or by any of its affiliates. In the staff opinion, it was found that the voting trust to be established under the VTA will effectively insulate CN and its affiliates from the violation of Subtitle IV of Title 49 of the United States Code and the policy of the Board that would result if CN were to acquire, without authorization, a sufficient interest in the carrier subsidiaries of IC Corp. as otherwise to result in control; and that, under the VTA, control of IC Corp. and its carrier subsidiaries can be exercised by CN and its subsidiaries only subsequent to approval by the Board of the CN/IC control application. We agree with the staff opinion and find that applicants' VTA conforms to Board regulations as well as long-standing Board and Interstate Commerce Commission precedent recognizing that beneficial ownership can be separated from control by an appropriate voting trust instrument.[8] Thus, UTU's request for dismissal of the proceeding is denied at this time.[9] Should UTU or any other person obtain evidence of unauthorized common control, through breach of the VTA or otherwise, that person may submit that evidence for our review.

Labor Impact

Applicants have submitted one Labor Impact Statement which shows the projected effects of the CN/IC merger on all categories of employment, including both agreement and nonagreement personnel of the combined CN/IC system. The Labor Impact Statement is organized by job classification, and for each classification, it reflects the location at which positions will be created, eliminated, or transferred, if applicable; the number of positions affected at each location; and whether positions will be moved to another location, abolished, or added. If a position is to be relocated, the Labor Impact Statement identifies the new location.

As explained in the Joint Verified Statement submitted with the Labor Impact Statement,[10] the number and percentage of adversely affected employees will be small in relation to the number of employees on the combined CN/IC system. The combined system will have approximately 26,000 employees, of which approximately 5,200 will be in the United States. Approximately 311 positions will be abolished, and approximately 138 other positions will be transferred within the United States. In this regard, applicants anticipate the following: (1) Impacts of the transaction will be mostly accommodated by normal attrition during the 3-year implementation period; (2) the transaction should have a positive effect on job opportunities; (3) some employees may be offered the option of receiving a severance package;

[7] Applicants note that the Board issued a protective order in Decision No. 1, served February 26, 1998, which provided that exchanges of data or other cooperative efforts between CN and IC for purposes of this proceeding will not be deemed a violation of 49 U.S.C. 11323; UTU alleges that CN and IC filed together a notice of intent to file a joint application for CN control of IC. Applicants state that such joint notices of intent are common in control proceedings, and its use here is of no consequence.

[8] *See CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc. and Consolidated Rail Corporation*, STB Finance Docket No. 33388, Decision No. 89 (STB served July 23, 1998) (*CSX/NS/CR No. 89*), slip op. at 127.

[9] UTU states that the Board should dismiss the proceeding, or alternatively, impose the statutory procedural schedule set forth at 49 U.S.C. 11325(b) to ensure proper review of the transaction.

[10] *See* CN/IC–7 at 283–84, Joint Verified Statement of Richard J. Dixon, Joseph T. Torchia, and James M. Harrell.

and (4) some adversely affected employees will refuse relocation offers and voluntarily forfeit their right to protective benefits.

Applicants anticipate that, if we approve the transactions proposed in the primary application and the related filing, we will impose on such transactions the standard labor protective conditions customarily imposed on similar such transactions. *See* CN/IC–7 at 283.

Related Filing

In STB Finance Docket No. 33556 (Sub-No. 1), CN, IC, Kansas City Southern Railway Company (KCS) and its affiliate Gateway Western Railway Company (GWWR), have filed an application for an order under 49 U.S.C. 11102 permitting GWWR to use without restriction three short connected segments of terminal trackage in Springfield, IL. These segments are now owned by Union Pacific Railroad Company (UP) as successor to SPCSL Corp. (SPCSL), and Norfolk & Western Railway Company (N&W), an affiliate of Norfolk Southern Corporation (NS).[11]

Applicants state that, without such relief, GWWR and IC will be unable to establish an efficient interchange necessary to serve effectively the new competitive traffic movements made possible by the CN/IC combination, as augmented by an agreement among CN, IC, and KCS dated April 15, 1998.[12]

Acceptance of Primary Application and Related Filing

We are accepting the primary application for consideration because it is in substantial compliance with the applicable regulations, waivers,[13] and requirements. *See* 49 U.S.C. 11321–26; 49 CFR part 1180. We are also accepting for consideration the related filing, which is also in substantial compliance with the applicable regulations and requirements.[14]

Public Inspection

The primary application and related filing, including the various accompanying exhibits, are available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, N.W., in Washington, DC.

Procedural Schedule

In Decision No. 5, served June 23, 1998, and published June 26, 1998, in the **Federal Register** at 63 FR 34956–59, we issued a proposed procedural schedule, and invited all interested parties to submit written comments on the proposed procedural schedule by July 16, 1998, with applicants' reply due by July 27, 1998. In response, we received the following comments: (1) UTU–3, UTU's motion to dismiss and comment on procedural schedule; (2) The Fertilizer Institute's (TFI) comments; and (3) CN/IC–10, applicants' comments. Applicants also filed reply comments (CN/IC–11) on July 27, 1998 and Allied Rail Unions responded (ARU–2) on August 5, 1998, to that filing, and argued against shortening the proposed schedule . We have carefully reviewed and considered all of these comments.

As we noted previously in our discussion of UTU's motion to dismiss, UTU requests that we dismiss the proceeding, or alternatively, impose the statutory procedural schedule set forth at 49 U.S.C. 11325(b) to ensure proper review of the transaction. The statute allows 16 months for the processing of major consolidation proceedings. Under 49 U.S.C. 11325(b)(3), the Board must conclude the evidentiary stage of the proceeding within 13 months of the application's filing date,[15] and must issue the final decision by the 90th day after the conclusion of the evidentiary stage.

In their comments and reply comments, applicants request that we adopt their original 180-day proposed schedule or, at least, adopt a middle-ground schedule and a single filing date approach. Applicants further state that, while the CN/IC transaction is important, it does not compare in size and complexity to the recent control transactions in *CSX/NS/CR*, *UP/SP*, and *BN/SF*. TFI also urges that we adopt a schedule similar to the 180-day schedule proposed by applicants.

Specifically, applicants request that we eliminate the proposed bifurcation and trifurcation of filings because it will create needless problems and burdens on all parties. TFI also urges the elimination of staggered filing dates for different parties. Applicants propose that all comments, protests, and requests for conditions, any other evidence or argument in opposition to the application by all parties, and any inconsistent or responsive applications, be due at the same date (F+90 days under the Board's proposed schedule), and that applicants' rebuttal or other responses to those filings be due 30 days later (F+120 days). Applicants note that no major merger in this decade has been considered under a fragmented procedural format, and that there is nothing inherent in the CN/IC transaction to warrant such a departure from consistent prior practice.

We will grant applicants' and TFI's request that we eliminate the staggered filing dates. As suggested by applicants, all comments, protests, and requests for conditions, any other evidence or argument in opposition to the application by all parties, and any inconsistent or responsive applications, will be due on the same date (F+90 days). Applicants' rebuttal and other responses to those filings will be due 45 days later. Other relevant due dates are discussed in detail under our discussion of filing due dates.

Few objections have been raised to the 10-month proposed procedural schedule. In light of UTU's concerns, we are reluctant at this time to reduce the time for processing the application. Earlier comments in opposition to applicants' 6-month proposed procedural schedule were filed by the Brotherhood of Maintenance of Way Employees (BMWE) on June 2, 1998, and the UTU on June 8, 1998. Both BMWE and UTU had stated that applicants' 180-day proposed schedule was too short and urged the Board to adopt the statutory procedural schedule set forth at 49 U.S.C. 11325(b). Alternatively, UTU urged the Board to adopt a 350-day schedule modeled upon the procedural schedule issued by the Board in *CSX/NS/CR No. 6* (STB served May 30, 1997). We believe that a 10-month procedural schedule would not delay unnecessarily any benefits that would flow from the proposed integration of the CN and IC systems and is middle-ground schedule that would allow sufficient time to develop the record upon which the Board's

[11] Applicants in this sub-numbered docket have advised that they have contacted UP about securing consent for use of the trackage involved in order for GWWR and IC to be able to interchange traffic in Springfield without regard to the limitations of the Ridgely Yard agreement, and are willing to continue such discussions after the filing of this application. They will advise the Board if those discussions make it unnecessary to act on this application.

[12] Applicants state that this agreement creates a strategic alliance among the parties and provides for their cooperative undertakings to provide joint-line service in specified areas competitive with other rail carriers, and provides that the alliance will use Springfield as one of two main interchanges for designated traffic. The agreement also provides that the railroads will use their best efforts to remove any impediments to the full utilization of an efficient connection between IC and GWWR in the vicinity of Springfield.

[13] In Decision No. 4, served June 23, 1998, we granted to the extent set forth in the decision, applicants' CN/IC–4 petition for waiver or clarification, and related relief.

[14] We reserve the right to require the filing of supplemental information from applicants or any other party or individual, if necessary to complete the record in this matter.

[15] Specifically, the statute requires the completion of the evidentiary stage within 12 months after publication of the **Federal Register** notice accepting the application. That publication is due no later than 30 days after the application is filed.

decision would be based. If, at some point in this proceeding (perhaps after Board receipt of filings due on F+90 days), it becomes clear that there are few contested issues to be resolved, we would be open to a reexamination of whether a shorter schedule and a more expeditious resolution can be accommodated.

Notice of Intent To Participate

Any person who wishes to participate in this proceeding as a party of record (POR) must file with the Secretary of the Board, no later than August 31, 1998, an original and 25 copies of a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on Judge Harfeld and on applicants' representatives. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

We will serve, as soon as practicable after August 31, 1998, a notice containing the official service list (the service list notice). Each party of record will be required to serve upon all other parties of record, within 10 days of the service date of the service list notice, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each party of record also will be required to file with the Secretary of the Board, within 10 days of the service date of the service list notice, an original plus five copies of a certificate of service, along with an electronic copy, indicating that the service required by the preceding sentence has been accomplished. Every filing made by a party of record after the service date of the service list notice must have its own certificate of service indicating that both Judge Harfeld and all PORs on the service list have been served with a copy of the filing. Members of the United States Congress (MOCs) and Governors (GOVs) are not parties of record (PORs), and therefore, need not be served with copies of filings, unless any such Member or Governor has requested to be, and is designated as, a POR.

We will serve copies of our decisions, orders, and notices only on those persons who are designated on the official service list as either POR, MOC, or GOV. All other interested persons are encouraged to make advance arrangements with the Board's copy contractor, DC News & Data, Inc. (DC News), to receive copies of Board decisions, orders, and notices served in this proceeding. DC News will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service. The telephone number for DC News is: (202) 289–4357.[16]

Descriptions of, and Filings Respecting, Responsive (Including Inconsistent) Applications [17]

Because the transaction proposed by applicants constitutes a major transaction within the meaning of our rail consolidation rules (49 CFR part 1180) [18] parties intending to file responsive (including inconsistent) applications must submit descriptions of those applications by August 31, 1998. The description must state that the commenting party intends to file an application seeking affirmative relief that requires an application to be filed with the Board (e.g., divestiture, purchase, trackage rights, inclusion, construction, or abandonment) and must include a general statement of what that application is expected to include. This will be considered a prefiling notice without which the Board will not entertain applications for this type of relief.

Petitions for waiver or clarification by responsive (including inconsistent) applicants must be filed by August 31, 1998. Each responsive (including inconsistent) application filed and accepted will be consolidated with the primary application in this proceeding.

Any responsive (including inconsistent) applicant must file by September 21, 1998, either: (1) a verified statement that the responsive (including inconsistent) application will have no significant environmental impact; or (2) a responsive environmental report (RER) that contains detailed environmental information regarding the responsive (including inconsistent) application.

The RER

The RER should comply with all requirements for environmental reports contained in our environmental rules at 49 CFR 1105.7. The RER should be based on consultations with the Board's Section of Environmental Analysis (SEA) and the various agencies set forth in 49 CFR 1105.7(b). In addition, the information in the RER should be organized as follows: Executive Summary; Purpose and Need for Agency Action; Description of the Inconsistent or Responsive Application and Related Operations; Description of the Affected Environment; Description of Alternatives; Analysis of the Potential Environmental Impacts; Proposed Mitigation; and Appropriate Appendices that include correspondence and consultation responses, bibliography, and a list of preparers.

The purpose of an RER is to provide us the information we need to assess the potential environmental impacts of all inconsistent and responsive applications in the context of the overall merger proposal. After an RER is received, SEA will verify the information contained in the document. If the RER is acceptable, SEA will include the RER with the Draft Environmental Assessment (Draft EA) for the entire merger that will be served and made available for public comment.

In order to ensure timely, consistent, and appropriate environmental documentation, inconsistent and responsive applicants must consult with SEA as early as possible. If an RER is insufficient, we may require additional environmental information or reject the inconsistent or responsive application.

A verified statement of no significant impact

If an action proposed under an inconsistent or responsive transaction would typically fall within 49 CFR 1105.6(c)(2), an RER would not be required because such an action is generally exempt from environmental review. In such a case, the inconsistent or responsive applicant would be required to file only a verified statement. The verified statement must demonstrate that the inconsistent or responsive application meets the exemption criteria of 49 CFR 1105.6(c)(2). Again, anyone desiring to file an inconsistent application or responsive application must consult

[16] An interested person does not need to be on the service list to obtain a copy of the primary application or any other filing made in this proceeding. Our Railroad Consolidation Procedures provide: "Any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order." *See* 49 CFR 1180.4(a)(3), as recently amended in *Railroad Consolidation Procedures—Modification of Fee Policy*, STB Ex Parte No. 556, 62 FR 9714, 9717 (Mar. 4, 1997) (interim rules), 62 FR 28375 (May 23, 1997) (final rules). Furthermore, DC News will provide, for a charge, copies of the primary application or any other filing made in this proceeding, except to the extent any such filing is subject to the protective order heretofore entered in this proceeding.

[17] An original and 25 copies of such descriptions, petitions for waiver or clarification, Responsive Environmental Reports, and Verified Statements must refer to STB Finance Docket No. 33556 (lead docket) and must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

[18] *See* Decision No. 2, served March 13, 1998, and published that day in the **Federal Register** at 63 FR 12574–75.

with SEA as early as possible regarding the appropriate environmental documentation.

SEA will review the verified statements. If a verified statement is insufficient, we may require additional environmental information or reject the inconsistent or responsive application. The verified statements, like the RERs, will be included in the Draft EA, which will be available for public review and comment.

Comments, Protests, Requests for Conditions, and Other Opposition Evidence and Argument, Including Filings by DOJ and DOT; Responsive (Including Inconsistent) Applications

Any interested persons, including the U.S. Attorney General and the U.S. Secretary of Transportation, may file written comments, protests, requests for conditions, and any other opposition evidence and argument, as well as responsive (including inconsistent) applications no later than October 13, 1998. This deadline applies to comments, etc., addressing the primary application or the related filing submitted with the primary application.

Parties filing comments, protests, requests for conditions, and any other opposition evidence and argument (including filings by DOJ and DOT) must submit an original and 25 copies of such documents, referring to STB Finance Docket No. 33556 (lead docket). Parties filing responsive (including inconsistent) applications must contact the Office of the Secretary, Case Control Unit, at (202) 565–1681 to obtain docket numbers for their respective applications, and must submit an original and 25 copies of each responsive (including inconsistent) application, referring to the assigned sub-docket number for that application and must accompany such application with the appropriate filing fee. All submissions must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, as previously noted, parties must submit one electronic copy of each document filed with the Board. Further details respecting such electronic submissions are provided below.

Written comments, etc., must be concurrently served by first class mail on the U.S. Attorney General and the U.S. Secretary of Transportation, Judge Harfeld, applicants' representatives, and all other parties of record.

Written comments, etc., must include: (1) the docket number and title of the proceeding; (2) the name, address, and telephone number of the commenting party and its representative upon whom service shall be made; (3) the commenting party's position, i.e., whether it supports or opposes the proposed transaction; (4) a list of any specific protective conditions sought; and (5) an analysis of the issues with particular attention to our general policy statement for the merger or control of at least two Class I railroads (49 CFR 1180.1), the statutory criteria (49 U.S.C. 11324), and antitrust policy.

Protesting parties are advised that, if they seek either the denial of the primary application or the imposition of conditions upon any approval thereof, on the theory that approval without imposition of conditions will harm either their ability to provide essential services and/or competition, they must present substantial evidence in support of their positions. See *Lamoille Valley R.R. Co.* v. *ICC*, 711 F.2d 295 (D.C. Cir 1983).

Response to Comments, Protests, Requested Conditions, and Other Opposition, Including DOJ and DOT; Rebuttal in Support of Primary Application and Related Application

Parties submitting responses to comments, protests, requested conditions, and other opposition, including DOJ and DOT, and rebuttal in support of the primary application and related application, must be filed with the Board by November 27, 1998.

Other Dates

The procedural schedule adopted in this decision further provides: (1) that applicants must file a Safety Integration Plan on August 14, 1998, as they have proposed; (2) that responses to any responsive (including inconsistent) applications must be filed by November 27, 1998; (3) that rebuttal in support of responsive (including inconsistent) applications must be filed by December 28, 1998; (4) that briefs must be filed by February 5, 1999; (5) that oral argument will be heard on March 8, 1999; (6) that, at the discretion of the Board, a voting conference will be held on March 15, 1999; and (7) that the final written decision, addressing the primary application and the related filing, and also addressing any responsive (including inconsistent) applications will be served on May 11, 1999.

Discovery

In Decision No. 2, served March 13, 1998, this proceeding was assigned to Judge Harfeld for the handling of all discovery matters and the initial resolution of all discovery disputes. Parties wishing to engage in discovery must consult with Judge Harfeld, who is designated to handle discovery matters and disputes. Judge Harfeld has the authority to rule on discovery matters but not to modify the procedural schedule.

Deadlines Applicable to Appeals and Replies

Any appeal to a decision issued by Judge Harfeld must be filed within 3 working days of the date of his decision; any response to such appeal must be filed within 3 working days of the date of filing of the appeal; and any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.

Environmental Review Process

SEA has determined that preparation of an Environmental Assessment (EA) is appropriate in this proceeding. This approach is consistent with the Board's environmental rules at 49 CFR 1105.6(b)(4), which call for an EA in a merger or acquisition such as this one. In making its determination to prepare an EA, SEA considered the nature and scope of environmental issues that could arise in this proceeding, as well as its consultation with applicants and its evaluation of the information to date, including the operating plan and associated environmental data that CN/IC submitted with their primary application filed on July 15, 1998. We agree with SEA that an EA is warranted in this proceeding.

The procedural schedule that we are adopting will permit us to take a hard look at environmental issues required by the National Environmental Policy Act (NEPA) and related regulations of the Council on Environmental Quality, and will provide the necessary time to enable us to prepare an EA and to include public participation by federal, state, and local agencies, as well as other concerned parties. If SEA determines that this proceeding has the potential for significant environmental impacts, then SEA may prepare an Environmental Impact Statement, as required by NEPA.

The EA will address potential environmental impacts of activities associated with the proposed merger, including rail line traffic density increases and decreases, rail yard and intermodal facility activity changes, and new construction. Specifically, the EA will address potential environmental impacts on safety, transportation systems, land use, energy, air quality, noise, biological resources, water resources, historic and cultural resources, environmental justice, and socioeconomic effects directly related to

changes in the environment, and will also include SEA's recommendations for environmental mitigation.

Applicants originally proposed to file an environmental report 30 days after they filed their application. In a letter dated June 18, 1998, however, applicants requested that SEA conduct a modified environmental review process in this proceeding. SEA concurs with this approach. Under this approach, applicants provided, with their application and operating plan, an environmental overview rather than an environmental report. *See* CN/IC–6, *Environmental Data—Exhibit 4,* at 22–34. This is consistent with the Board's environmental rules at 49 CFR 1105.10(d), which waive the requirement for an environmental report for applicants that retain an independent third-party contractor to work under SEA's direction to prepare the necessary environmental documentation. For this proceeding, applicants have retained the requisite independent third-party contractor.

With direction and guidance from SEA, applicants will prepare and submit to SEA a Preliminary Draft Environmental Assessment (PDEA). Preparation of a PDEA is consistent with the Council on Environmental Quality regulations at 40 CFR 1506.5(b) that permit preparation of an environmental assessment by an applicant. Upon receipt of applicants' PDEA, SEA will review and verify the environmental information provided by applicants in this document. SEA will then prepare a Draft EA for public review and comment. The Draft EA will include SEA's independent preliminary recommendations for mitigation to address potentially adverse environmental impacts.

As part of the environmental review process, applicants will also submit a Safety Integration Plan, which will fully describe the extensive plans they have for maximizing the safe operation of the combined system.

After reviewing all of the public comments on the Draft EA and conducting additional analyses, SEA will prepare a Final Environmental Assessment (Final EA).

The Final EA will include SEA's final recommendations for environmental mitigation. The Board will consider all public comments, the Draft EA and Final EA, and SEA's environmental recommendations in making its final decision in this proceeding.

For additional information on preparation of the EA, contact SEA's Project Manager for the proposed CN/IC Acquisition, Michael Dalton, at (202) 565–1530.

Electronic Submissions

As already mentioned, in addition to submitting an original and 25 paper copies of each document filed with the Board, parties must submit, on disks or CDs, copies of all textual materials, electronic workpapers, data bases and spreadsheets used to develop quantitative evidence. Data must be submitted on 3.5 inch IBM-compatible floppy disks or CDs. Textual materials must be in, or convertible by and into, WordPerfect 7.0. Electronic spreadsheets must be in, or convertible by and into, Lotus 1–2–3 97 Edition, Excel Version 7.0, or Quattro Pro Version 7.0. Each disk or CD should be clearly labeled with the identification acronym and number of the corresponding paper document, *see* 49 CFR 1180.4(a)(2), and a copy of such disk or CD should be provided to any other party upon request. Also, each disk or CD should be clearly labeled as containing confidential or redacted materials. The data contained on the disks and CDs submitted to the Board will be subject to the protective order granted in Decision No. 1, served February 26, 1998, and will be for the exclusive use of Board employees reviewing substantive and/or procedural matters in this proceeding. The flexibility provided by such computer data will facilitate timely review by the Board and its staff.[19]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered

1. UTU's motion to dismiss is denied.
2. The primary application in STB Finance Docket No. 33556, and the related filing in the embraced docket, STB Finance Docket No. 33556 (Sub-No. 1), are accepted for consideration.
3. Parties must comply with the Final Procedural Schedule adopted by the Board in this proceeding as shown in Appendix A.
4. Parties must comply with the procedural requirements described in this decision.
5. Any appeal to a decision issued by Judge Harfeld must be filed within 3 working days of the date of his decision, and any response to any such appeal must be filed within 3 working days of the date of filing of the appeal.
6. Any reply to any motion filed with the Board itself in the first instance must be filed within 3 working days of the date of filing of the motion.
7. This decision is effective on August 14, 1998.

Decided: August 10, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

Appendix A: Final Procedural Schedule

July 15, 1998
Primary application and related application filed.

August 14, 1998
Board notice of acceptance of primary application and related application published in the **Federal Register.**

August 14, 1998
Safety Integration Plan due.

August 31, 1998
Notification of intent to participate due.

August 31, 1998
Description of anticipated inconsistent and responsive applications due; petitions for waiver or clarification due with respect to such applications.

September 21, 1998
Responsive Environmental Report and Environmental Verified Statements for inconsistent and responsive applicants due.

October 13, 1998
All comments, protests, requests for conditions, and any other evidence and argument in opposition to the primary application due, including filings of the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT). Inconsistent and responsive applications due.

November 2, 1998
Notice of acceptance (if required) of inconsistent and responsive applications published in the **Federal Register.**

November 27, 1998
Response to comments, protests, requested conditions, and other opposition due. Response to comments of DOJ and DOT due. Rebuttal in support of primary application and related applications due. Response to inconsistent and responsive applications due.

December 28, 1998
Rebuttal in support of inconsistent and responsive applications due.

February 5, 1999
Briefs due, all parties (not to exceed 50 pages for applicants and not to exceed 25 pages for all other parties).

March 8, 1999
Oral argument (close of record).

March 15, 1999
Voting conference (at Board's discretion).

May 11, 1999
Date of service of final decision.

Immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected

[19] The electronic submission requirements set forth in this decision supersede, for the purposes of this proceeding, the otherwise applicable electronic submission requirements set forth in our regulations. *See* 49 CFR 1104.3(a), as amended in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings,* STB Ex Parte No. 527, 61 FR 52710, 52711 (Oct. 8, 1996), 61 FR 58490, 58491 (Nov. 15, 1996).

from discovery) in a depository open to all parties, and will make its witnesses available for depositions. Access to documents subject to protective order will be appropriately restricted. Discovery relating to applications and other filings (including responsive and inconsistent applications), where permitted, will begin immediately upon their filing. The Administrative Law Judge (ALJ) assigned to this proceeding will have the authority initially to resolve any discovery disputes.

[FR Doc. 98–21934 Filed 8–13–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub–No. 124X)]

Union Pacific Railroad Company—Abandonment Exemption—In Sedgwick County, KS

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to abandon and discontinue service over a 0.56-mile line of railroad on the Midland Valley Industrial Lead extending from the end of the line at milepost 312.09 to milepost 312.65 in Wichita, Sedgwick County, KS. The line traverses United States Postal Service Zip Code 67213.[1]

UP has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 13, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 24, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 3, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by August 19, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by August 14, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 6, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–21754 Filed 8–13–98; 8:45 am]

BILLING CODE 4915–00–P

[1] By petition for exemption filed July 9, 1998, UP is seeking an exemption from the requirements of 49 U.S.C. 10904 (offers of financial assistance) (OFAs) and 49 U.S.C. 10905 (public use conditions). The City of Wichita, KS, supports UP's petition. The merits of the petition will be addressed in a subsequent Board decision.

The line will be conveyed to the City of Wichita, KS (City), pursuant to a Memorandum of Understanding between UP and the City, which was approved in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp., and The Denver and Rio Grande Western Railroad Company*, Finance Docket No. 32760 (STB served July 8, 1998).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 72–363; 5 U.S.C. App. 2), notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Monday, September 14, 1998, 10:00 to 4:00 p.m. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC, in conference room 6200–04 of the Nassif Building.

The Advisory Council, called for 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 Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include a review of the last meeting, discussion of TEA–21 and its impact on BTS, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Carolee Bush, Council Liaison, on (202) 366–6946 prior to September 10. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Bush.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Bush (202) 366–6946 at least seven days prior to the meeting.

Robert A. Knisely,

Executive Director, Advisory Council on Transportation Statistics.

[FR Doc. 98–21876 Filed 8–13–98; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 6, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 14, 1998 to be assured of consideration.

Departmental Offices/Executive Office for Asset Forfeiture

OMB Number: 1505–0152.

Form Number: TD F 90–22.46.

Type of Review: Extension.

Title: Request for Transfer of Property Seized/Forfeited by a Treasury Agent.

Description: Form TD F 90–22.46.

Respondents: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 600.

Estimated Burden Hours Per Respondent/Recordkeeper: 30 minutes.

Frequency of Response: Other (one submission per requested asset sharing).

Estimated Total Reporting/ Recordkeeping Burden: 1,300 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–21828 Filed 8–13–98; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 7, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 14, 1998 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0083.

Form Number: ATF F 1582–B (5130.6).

Type of Review: Extension.

Title: Drawback on Beer Exported.

Description: When taxpaid beer is removed from a brewery and ultimately exported, the brewer exporting the beer is eligible for a drawback (refund) of Federal taxes paid. By completing this form and submitting documentation of exportation, the brewer may receive a refund of Federal taxes paid.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 5,000 hours.

OMB Number: 1512–0164.

Form Number: ATF F 3069 (5200.7).

Type of Review: Extension.

Title: Schedule of Tobacco Products, Cigarette Papers or Tubes Withdrawn from the Market.

Description: ATF F 3069 (5200.7) is used by persons who intend to withdraw tobacco products from the market for which the taxes have already been paid or determined. The form describes the products that are to be withdrawn to determine the amount of tax to be claimed later as a tax credit or refund. The form notifies ATF when withdrawal or destruction is to take place, and ATF may elect to supervise withdrawal or destruction.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 119.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,071 hours.

OMB Number: 1512–0337.

Recordkeeping Requirement ID Number: ATF REC 5150/1.

Type of Review: Extension.

Title: Usual and Customary Business Records Relating to Denatured Spirits.

Description: Denatured Spirits are used for nonbeverage industrial purposes in the manufacture of personal household products. Records ensure spirits accountability. Tax revenue and public safety are protected.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Recordkeepers: 3,111.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1512–0363.

Recordkeeping Requirement ID Number: ATF REC 5210/6.

Type of Review: Extension.

Title: Tobacco Products Manufacturers—Supporting Records for Removals for the Use of the United States.

Description: Used by tobacco products manufacturers to record removals of tobacco products for use of the United States. Used by ATF to verify that removals were tax exempt. Needed to trace transactions for protection of the revenue.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 101.

Estimated Burden Hours Per Recordkeeper: 5 hours.

Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 505 hours.

OMB Number: 1512–0373.
Recordkeeping Requirement ID Number: ATF REC 5400/3.
Type of Review: Extension.
Title: RECORDS AND SUPPORTING DATA: Importation, Receipt, Storage, and Disposition by Licensed Explosives Manufacturers, Importers, Dealers, and Users.
Description: These records show daily activities in the importation, manufacture, receipt, storage, and disposition of all explosive materials covered under 18 U.S.C. Chapter 40. The records are used to show where and to whom explosive materials are sent, thereby ensuring that any diversions will be readily apparent, and, if lost or stolen, ATF will be immediately notified on discovery of the loss or theft.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 10,519.
Estimated Burden Hours Per Recordkeeper: 6 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: hours.

OMB Number: 1512–0543.
Form Number: ATF F 5300.11A.
Type of Review: Extension.
Title: Annual Firearms Manufacturing and Exportation Report of Semiautomatic Assault Weapons.
Description: The purpose for which the information is collected includes witness qualifications, congressional investigations, court decisions and disclosure, furnishing information to other Federal agencies and compliance inspections. The form will capture information on semiautomatic assault weapons that is not correctly captured on ATF F 5300.11.
Respondents: Business or other for-profit , Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 1,556.
Estimated Burden Hours Per Respondent: 6 minutes.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 156 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 98–21829 Filed 8–13–98; 8:45 am]
BILLING CODE 4810–31–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Heroic Armor of the Italian Renaissance: Filippo Negroli and His Contemporaries"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Heroic Armor of the Italian Renaissance: Filippo Negroli and His Contemporaries", imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art from on or about October 5, 1998 to on or about January 21, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel, 202/619–6084, and the address is Room 700, U.S. Information Agency, 301 4th St., S.W., Washington, D.C. 20547–0001.

Dated: August 10, 1998.

R. Wallace Stuart,
Deputy General Counsel.
[FR Doc. 98–21925 Filed 8–13–98; 8:45 am]
BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "New York Begins: A Rare Drawing of New Amsterdam (c. 1650–54)"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 F.R. 27393, July 2, 1985). I hereby determine that the objects on the list specified below, to be included in the exhibit, "New York Begins: A Rare Drawing of New Amsterdam," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Museum of the City of New York, in New York, New York, from on or about September 19, 1998, to on or about November 29, 1998, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Jacqueline Caldwell, Assistant General Counsel, Office of the General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: August 10, 1998.

Les Jin,
General Counsel.
[FR Doc. 98–21924 Filed 8–13–98; 8:45 am]
BILLING CODE 8230–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

As required by the Federal Advisory Committee Act, the VA hereby gives notice that the Special Medical Advisory Group has scheduled a meeting on September 16, 1998. The meeting will convene at 8:30 a.m. and end at about 4:00 p.m. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, NW., Washington, D.C. The purpose of the meeting is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussion of telemedicine, government computerized patient record, quality and safety, long term

care and unfunded mandates in a fixed budget.

All sessions will be open to the public. Those wishing to attend should contact Brenda Goodworth, Office of the Under Secretary for Health, Department of Veterans Affairs. Her phone number is 202–273–5878.

Dated: August 10, 1998.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–21939 Filed 8–13–98; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday
August 14, 1998

Part II

Environmental Protection Agency

Draft Water Quality Criteria Methodology Revisions: Human Health; Notice

ENVIRONMENTAL PROTECTION AGENCY

[WH–FRL–6141–3]

Draft Water Quality Criteria Methodology Revisions: Human Health

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Draft Revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health.

SUMMARY: EPA is announcing the availability for public comment of draft revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health ("AWQC Methodology Revisions") published pursuant to Section 304(a)(1) of the Clean Water Act (CWA). These AWQC Methodology Revisions, once finalized, will supersede the existing Guidelines and Methodology Used in the Preparation of Health Effect Assessment Chapters of the Consent Decree Water Criteria Documents ("1980 AWQC National Guidelines"), published by EPA in November 1980 (45 FR 79347, Appendix C). Today's document is intended to satisfy the requirements of Section 304(a)(1) of the CWA that EPA periodically revise criteria for water quality to accurately reflect the latest scientific knowledge on the kind and extent of all identifiable effects on health and welfare that may be expected from the presence of pollutants in any body of water, including ground water. These AWQC Methodology Revisions are necessitated by the many significant scientific advances that have occurred during the past 17 years in such key areas as cancer and noncancer risk assessments, exposure assessments, and bioaccumulation. These revisions are not regulations and do not impose legally-binding requirements on EPA, States, Territories, Tribes, or the public. Also published as part of this document are draft AWQC criteria document summaries for three contaminants that reflect the Draft AWQC Methodology Revisions.

AVAILABILITY OF DOCUMENTS: The Draft AWQC Methodology Revisions are published below. Copies of the technical support document and the three complete criteria documents cited in this document may be obtained from the U.S. EPA National Center for Environmental Publications and Information (NCEPI), 11029 Kenwood Road, Cincinnati, OH 45242 or (513) 489–8190. Materials in the public docket will be available for public inspection and copying during normal business hours at the Office of Water Docket, 401 M St., S.W., Washington, D.C. 20460 by appointment only. Appointments may be made by calling (202) 260–3027 and requesting item W–97–20. A reasonable fee will be charged for photocopies.

Selected documents supporting the Draft AWQC Methodology Revisions will also be available for viewing by the public at the following locations:

I. Region 1 Library, JFK Federal Building, One Congress Street, Boston, MA 02203 (617) 565–3300
II. Region 2 Library, 290 Broadway, 16th Floor, New York, NY 10007 (212) 637–3185
III. Region 3 Library, 841 Chestnut Building, Philadelphia, PA 19107 (215) 566–5254
IV. Region 4 Library, Atlanta Federal Center, 61 Forsyth St, SW, 9th Floor Tower, Atlanta, GA 30303–3104 (404) 347–4216
V. Region 5 Library, 77 West Jackson Boulevard, Chicago, IL 60604–3590 (312) 353–2022
VI. Region 6 Library, 1445 Ross Avenue, Dallas, TX 75202 (214) 665–6424
VII. Region 7 Information Resource Center, 726 Minnesota Avenue, Kansas City, KS 66101–2728 (913) 551–7241
VIII. Region 8 Library, 999 18th Street, Suite 500, Denver, CO 80202–2466 (303) 312–6746
IX. Region 9 Library, 75 Hawthorne Street, San Francisco, CA 94105 (415) 744–1517
X. Region 10 Library, 1200 Sixth Avenue, Seattle, WA 98101 (206) 553–1289

DATES: EPA will accept public comments on the Draft AWQC Methodology Revisions on or before December 14, 1998. Comments postmarked after this date may not be considered.

ADDRESSES: An original and three copies of all comments and enclosures, including references, on the draft AWQC Methodology Revisions should be addressed to the W–97–20 Docket Clerk, Water Docket (4101), U.S. EPA, 401 M St., S.W., Washington, D.C. 20460. Electronic comments must be submitted as a WordPerfect 5.1 or WP 6.1 file or as an ASCII file avoiding the use of special characters. Comments and data will also be accepted on disks in WordPerfect 5.1 or WP 6.1 or ASCII file format. Electronic comments on this document may be filed via e-mail at: ow-docket@epamail.epa.gov. Commenters who want EPA to acknowledge receipt of their comments should include a self-addressed stamped envelope. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: Denis Borum (4304), U.S. EPA, 401 M St. S.W., Washington, D.C. 20460 (Telephone: (202) 260–8996).

SUPPLEMENTARY INFORMATION:

List of Acronyms Used

ADI	Acceptable Daily Intake.
ARAR	Applicable or Relevant and Appropriate Requirements.
ASTM	American Society of Testing and Materials.
AWQC	Ambient Water Quality Criteria.
BAF	Bioaccumulation Factor.
BCF	Bicconcentration Factor.
BMD	Benchmark Dose.
BMR	Benchmark Response.
BSAF	Biota-Sediment Accumulation Factors.
BW	Body Weight.
C_{18}	Carbon-18
CDC	U.S. Centers for Disease Control and Prevention.
CR	Consumption Rate.
CSFII	Continuing Survey of Food Intake by Individuals.
CTR	California Toxics Rule.
CWA	Clean Water Act.
DI	Drinking Water Intake.
DNA	Deoxyribonucleic Acid.
DOC	Dissolved Organic Carbon.
DT	Non-Fish Dietary Intake.
ED_{10}	Dose Associated with a 10 Percent Extra Risk.
EMAP	Environmental Modeling and Assessment Program.
EPA	Environmental Protection Agency.
FCM	Food Chain Multiplier.
FDA	Food and Drug Administration.
FEL	Frank Effect Level.
FI	Fish Intake.
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act.
FR	Federal Register.
FSTRAC	Federal State Toxicology and Risk Analysis Committee.
GI	Gastrointestinal.
GLI	Great Lakes Water Quality Initiative.
IARC	International Agency for Research on Cancer.
II	Incidental Intake.
ILSI	International Life Sciences Institute.
IN	Inhalation Intake.
IRIS	Integration Risk Information System.
kg	kilogram
K_{ow}	Octanol-Water Partition Coefficient.
L	Liter.
LED_{10}	The Lower 95 Percent Confidence Limit on a Dose Associated with a 10 Percent Extra Risk.

LIST OF ACRONYMS USED—Continued

LMS	Linear Multistage Model.
LOAEL	Lowest Observed Adverse Effect Level.
LR	Lifetime Risk.
MCL	Maximum Contaminant Level.
MCLG	Maximum Contaminant Level Goal.
MF	Modifying Factor.
mg	Milligrams.
ml	Milliliters.
MoA	Mode of Action.
MoE	Margin of Exposure.
MoS	Margin of Safety.
NCHS	National Center for Health Statistics.
NHANES	National Health and Nutrition Examination Survey.
NIEHS	National Institute of Environmental Health Sciences.
NOAEL	No Observed Adverse Effect Level.
NOEL	No Observed Effect Level.
NPDES	National Pollutant Discharge Elimination System.
NTIS	National Technical Information Service.
NTR	National Toxics Rule.
ODES	Ocean Data Evaluation System.
PAH	Polycyclic Aromatic Hydrocarbon.
PBPK	Physiologically Based Pharmacokinetic.
PCB	Polychlorinated BIPHENYLS.
PCS	Permits Compliance System.
Pdp	Point of Departure.
POC	Particulate Organic Carbon.
q_1^*	Cancer Potency Factors.
RDA	Recommended Daily Allowance.
RfC	Reference Concentration.
RfD	Reference Dose.
RPF	Relative Potency Factor.
RSC	Relative Source Contribution.
RSD	Risk Specific Dose.
SAR	Structure-Activity Relationship.
SAB	Science Advisory Board.
SDWA	Safe Drinking Water Act.
SF	Safety Factor.
STORET	Storage Retrieval.
TCDD-dioxin	Tetrachlorodibenzo-*p*-dioxin.
TEAM	Total Exposure Assessment Methodology.
TEF	Toxicity Equivalency Factor.
TMDL	Total Maximum Daily Load.
TSD	Technical Support Document.
USDA	United States Department of Agriculture.
UF	Uncertainty Factor.
WQBEL	Water Quality-Based Effluent Limits.

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Summary of Today's Action

I. Background

Section 304(a)(1) of the Clean Water Act requires EPA to develop and periodically revise criteria for water quality accurately reflecting the latest scientific knowledge. In 1980, EPA published ambient water quality criteria (AWQC) for 64 pollutants/pollutant classes and provided a methodology for deriving the criteria. The 1980 AWQC National Guidelines for developing human health AWQC addressed three types of endpoints: noncancer, cancer and organoleptic (taste and odor) effects. Criteria values for the protection against noncancer and cancer effects were estimated by using risk assessment-based procedures, including extrapolation from animal toxicity or human epidemiological studies. Basic human exposure assumptions were applied to the criterion equation, such as: the exposed individual is a 70-kilogram adult male; the assumed consumption of freshwater and estuarine fish and shellfish is 6.5 grams/day; and the assumed ingestion rate of drinking water is 2 liters/day. When using cancer as the critical risk assessment endpoint, which was assumed not to have a threshold, the AWQC were presented for information purposes as a range of concentrations associated with specified incremental lifetime risk levels (*i.e.*, a range from 10^{-5} to 10^{-7}). When using noncancer effects as the critical endpoint, the AWQC reflected an assessment of a "no-effect" level, since noncancer effects generally exhibit a threshold.

Scientific Advances Since 1980

Since 1980, EPA risk assessment practices have evolved significantly, particularly in the areas of cancer and noncancer risk assessments, exposure assessments and bioaccumulation. In cancer risk assessment, there have been advances with respect to the use of mode of action information to support both the identification of carcinogens and the selection of procedures to characterize risk at low, environmentally relevant exposure levels. Related to this is the development of new procedures to quantify cancer risks at low doses to replace the current default use of the linearized multistage (LMS) model. In noncancer risk assessment, the Agency is moving toward the use of the benchmark dose (BMD) and other dose-response approaches in place of the traditional NOAEL approach to estimate a reference dose or concentration. In exposure analysis, several new studies have addressed water consumption and fish tissue consumption. These exposure studies provide a more current and comprehensive description of national, regional and special population consumption patterns that EPA has reflected in the Draft AWQC Methodology Revisions. In addition, more formalized procedures are now available to account for human exposure to multiple sources when setting health goals such as AWQC that have addressed only one exposure source. With respect to bioaccumulation, the Agency has moved toward the use of a bioaccumulation factor (BAF) to reflect the uptake of a contaminant from all sources (*e.g.*, ingestion, sediment) by fish and shellfish, rather than just from the water column as reflected by the use of a bioconcentration factor (BCF) as included in the 1980 methodology. The Agency has developed detailed procedures and guidelines for estimating BAF values.

EPA Human Health Risk Assessment Guidelines Developed Since 1980

When the 1980 AWQC National Guidelines were developed, EPA had not yet developed formal cancer or noncancer risk assessment guidelines. Since then EPA has published several risk assessment guidelines documents. In 1996, the Agency published Proposed Guidelines for Carcinogen Risk Assessment (61 FR 17960) which when finalized will supersede the carcinogenic risk assessment guidelines published in 1986 (51 FR 33992). In addition, guidelines for mutagenicity assessment were also published in 1986 (51 FR 34006). The Agency also issued guidelines for assessing the health risks to chemical mixtures in 1986 (51 FR 34014). With respect to noncancer risk assessment, the Agency published guidelines in 1988 for assessing male and female reproductive risk (53 FR 24834) and in 1991 for assessing developmental toxicity (56 FR 63798). The guidelines for assessing reproductive toxicity were subsequently updated and finalized (61 FR 56274) in 1996. In 1991, the Agency also developed an external review draft of revised risk assessment guidelines for noncancer health effects. In 1995, EPA also proposed guidelines for neurotoxicity risk assessment (60 FR 52032).

In addition to these risk assessment guidelines, EPA also published the "Exposure Factors Handbook" in 1989, which presents commonly used Agency exposure assumptions and the surveys from which they are derived. The Exposure Factors Handbook (EPA/600/P–95/002Fa) was updated in 1997. In 1992, EPA published the revised

Guidelines for Exposure Assessment (57 FR 22888), which describe general concepts of exposure assessment, including definitions and associated units, and provide guidance on planning and conducting an exposure assessment. Also, in the 1980s the Agency published the Total Exposure Assessment Methodology (TEAM), which presents a process for conducting comprehensive evaluation of human exposures. The Agency has recently developed the Relative Source Contribution Policy, which is currently undergoing Agency review, for assessing total human exposure to a contaminant and allocating the RfD among the media of concern. In 1997, EPA developed draft Guiding Principles for Monte Carlo analysis.

Also, in 1986, the Agency made available to the public the Integrated Risk Information System (IRIS). IRIS is a data base that contains risk information on the cancer and noncancer effects of chemicals. The IRIS assessments are peer reviewed and represent EPA consensus positions across the Agency's program offices and regional offices. In 1995, the Agency initiated an IRIS pilot program to test improvements to the internal peer review and consensus processes, and to provide more integrated characterizations of cancer and noncancer health effects.

Differing Risk Assessment and Risk Management Approaches for AWQC and MCLGs

Another reason for these revisions is the need to bridge the gap between the differences in the risk assessment and risk management approaches used by EPA's Office of Water for the derivation of AWQC under the authority of the CWA and MCLGs (Maximum Contaminant Level Goals) under the Safe Drinking Water Act (SDWA). Three notable differences are with respect to the treatment of chemicals designated as Group C possible human carcinogens—under the 1986 Guidelines for Carcinogen Risk Assessment, the consideration of nonwater sources of exposure when setting an AWQC or MCLG for a noncarcinogen, and cancer risk ranges.

1. Group C Chemicals. Chemicals have been typically classified as Group C—*i.e.*, possible human carcinogens'—under the existing (1986) EPA cancer classification scheme for any of the following reasons:

(1) Carcinogenicity has been documented in only one test species and/or only one cancer bioassay and the results do not meet the requirements of "sufficient evidence."

(2) Tumor response is of marginal significance due to inadequate design or reporting.

(3) Benign, but not malignant, tumors occur with an agent showing no response in a variety of short-term tests for mutagenicity.

(4) There are responses of marginal statistical significance in a tissue known to have a high or variable background rate.

The 1986 Guidelines for Carcinogen Risk Assessment specifically recognized the need for flexibility with respect to quantifying the risk of Group C agents. The guidelines noted that agents judged to be in Group C, possible human carcinogens, may generally be regarded as suitable for quantitative risk assessment, but that case-by-case judgments may be made in this regard.

The EPA Office of Water has historically treated Group C chemicals differently under the CWA and the SDWA. It is important to note that the 1980 AWQC National Guidelines for setting AWQC under the CWA predated EPA's carcinogen classification system, which was proposed in 1984 (49 FR 46294) and finalized in 1986 (51 FR 33992). The 1980 AWQC National Guidelines did not explicitly differentiate among agents with respect to the weight-of-evidence for characterizing them as likely to be carcinogenic to humans. For all pollutants judged as having adequate data for quantifying carcinogenic risk—including those now classified as Group C—AWQC were derived based on data on cancer incidence. In the November 1980 **Federal Register** document, EPA emphasized that the AWQC for carcinogens should state that the recommended concentration for maximum protection of human health is zero. At the same time, the criteria published for specific carcinogens presented water concentrations for these pollutants corresponding to individual lifetime cancer risk levels in the range of 10^{-7} to 10^{-5}.

In the development of national primary drinking water regulations under the SDWA, EPA is required to promulgate a health-based MCLG for each contaminant. The Agency policy has been to set the MCLG at zero for chemicals with strong evidence of carcinogenicity associated with exposure from water. For chemicals with limited evidence of carcinogenicity, including many Group C agents, the MCLG is usually obtained using an RfD based on its noncancer effects with the application of an additional uncertainty factor of 1 to 10 to account for its possible carcinogenicity. If valid noncancer data for a Group C agent are not available to establish an RfD but adequate data are available to quantify the cancer risk, then the MCLG is based upon a nominal lifetime excess cancer risk calculation in the range of 10^{-5} to 10^{-6} (ranging from one case in a population of one hundred thousand to one case in a population of one million). Even in those cases where the RfD approach has been used for the derivation of the MCLG for a Group C agent, the drinking water concentrations associated with excess cancer risks in the range of 10^{-5} to 10^{-6} were also provided for comparison.

It should also be noted that EPA's pesticides program has applied both of the previously described methods for addressing Group C chemicals in actions taken under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and finds both methods applicable on a case-by-case basis. Unlike the drinking water program, however, the pesticides program does not add an extra uncertainty factor to account for potential carcinogenicity when using the RfD approach.

2. Consideration of Nonwater Sources of Exposure. The 1980 AWQC National Guidelines for setting AWQC recommended that contributions from nonwater sources, namely air and non-fish dietary intake, be subtracted from the ADI, thus reducing the amount of the ADI "available" for water-related sources of intake. In practice, however, when calculating human health criteria, these other exposures were generally not considered because reliable data on these exposure pathways were not available. Consequently, the AWQC were usually derived such that drinking water and fish ingestion accounted for the entire ADI (now called RfD).

In the drinking water program, a similar "subtraction" method was used in the derivation of MCLGs proposed and promulgated in drinking water regulations through the mid-1980s. More recently, the drinking water program has consistently used a "percentage" method in the derivation of MCLGs for noncarcinogens. In this approach, the percentage of total exposure typically accounted for by drinking water, referred to as the relative source contribution (RSC), is applied to the RfD to determine the maximum amount of the RfD "allocated" to drinking water reflected by the MCLG value. In using this percentage procedure, the drinking water program also applies a ceiling level of 80 percent of the RfD and a floor level of 20 percent of the RfD. That is, the MCLG cannot account for more than 80 percent of the RfD, nor less than 20 percent of the RfD.

The drinking water program usually takes a conservative public health approach of applying an RSC factor of 20 percent to the RfD when adequate exposure data do not exist, assuming that the major portion (80 percent) of the total exposure comes from other sources, such as diet.

3. Cancer Risk Ranges. In addition to the different risk assessment approaches discussed above for deriving AWQC and MCLGs for Group C agents, different risk management approaches have arisen between the drinking water and ambient surface water programs with respect to using lifetime excess risk values when setting health-based criteria for carcinogens. As indicated previously, the surface water program historically derived AWQC for carcinogens that generally corresponded to lifetime excess cancer risk levels of 10^{-7} to 10^{-5}. The drinking water program has set MCLGs for Group C agents based on a slightly less stringent risk range of 10^{-6} to 10^{-5}, while MCLGs for chemicals with strong evidence of carcinogenicity (that is, classified as Group A (known) or B (probable) human carcinogen) are set at zero.

It is also important to note that under the drinking water program, for those substances having an MCLG of zero, enforceable Maximum Contaminant Levels (MCLs) have generally been promulgated to correspond with cancer risk levels ranging from 10^{-6} to 10^{-4}. Unlike AWQC and MCLGs which are strictly health-based criteria, MCLs are developed with consideration given to the costs and technological feasibility of reducing contaminant levels in water to meet those standards.

Steps Taken Toward Evaluating and Revising the 1980 AWQC National Guidelines

In order to begin developing a "state-of-the-science" approach to revising the 1980 AWQC National Guidelines, EPA prepared an issues paper that described the 1980 methodology, discussed areas that needed strengthening, and proposed revisions. This paper was then distributed for review and comment to experts at EPA headquarters, regional offices, and laboratories; other Federal Agencies, such as the Food and Drug Administration (FDA), the National Institute of Environmental Health Sciences (NIEHS), and the Centers for Disease Control and Prevention (CDC); State health organizations; Canadian health agencies; academe; and environmental, industry, and consulting organizations.

1. September 1992 National Workshop. On September 13–16, 1992, more than 100 invited participants discussed the critical issues in a workshop convened in Bethesda, Maryland. Based on their expertise, attendees were assigned to specific technical work groups. The work group topics were cancer risk, noncancer risk, exposure, microbiology, minimum data, and bioaccumulation. Each work group member received a set of detailed questions that served to focus discussions on critical factors in the 1980 AWQC National Guidelines. After the work group members deliberated separately on their specific technical areas, all workshop participants were given the opportunity to comment on the proceedings. After the workshop concluded, the chairperson for each technical work group prepared a written summary of that group's deliberations and recommendations. Each work group participant was given the opportunity to review and comment on the summaries; these comments were used to prepare a draft of the proposed revision to the methodology.

2. Science Advisory Board Review. After review of the draft of the proposed revisions to the methodology by EPA, the workshop participants, and other relevant parties, a summary document was submitted for review and comment to the Science Advisory Board (SAB) in January 1993 and presented to the Drinking Water Committee of the SAB during its meeting on February 8–9, 1993. The SAB presented its official comments to EPA on August 12, 1993. The SAB comments have been highlighted and addressed in each of the technical areas discussed in Appendix III of this document. A complete copy of the document submitted to the SAB and SAB's comments are available in the docket accompanying this document.

3. FSTRAC Review. At the Federal State Toxicology and Risk Analysis Committee (FSTRAC) meeting on December 1–3, 1993, in Washington, D.C., several State representatives presented their opinions on the preliminary draft recommendations for revisions to the 1980 AWQC National Guidelines. A summary of this meeting is presented in a document entitled "Workshop Summary: State Comments on the Preliminary Draft Revisions of the Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health." This document is also available for review in the docket supporting this proposal.

4. Water Quality Guidance for the Great Lakes System. In March 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (60 FR 15366). The Great Lakes Water Quality Guidance, developed under Section 118(c)(2) of the CWA, provides water quality criteria for 29 pollutants as well as methodologies, policies, and procedures for Great Lakes States and Tribes to establish consistent, long-term protection for fish and shellfish in the Great Lakes and their tributaries, as well as for the people and wildlife who consume them. In developing the methodology to derive human health criteria for the waters of the Great Lakes System, the Agency was mindful of the need for consistency with the planned changes in the methodology for deriving national AWQC for the protection of human health presented in today's proposal. Throughout the following text, references are made to comparisons of the two methodologies, national and Great Lakes Water Quality Guidance, especially whenever differences occur due to regional exposure assumptions made for the Great Lakes System.

Major Changes in the Draft AWQC Methodology Revisions

The proposal presents several changes from the 1980 AWQC National Guidelines:

1. EPA's future role in developing AWQC for the protection of human health will include the refinement of the revised methodology, the development of revised criteria for chemicals of high priority and national importance (including, but not limited to chemicals that bioaccumulate, such as PCBs, dioxin, and mercury), and the development or revision of AWQC for some additional priority chemicals. EPA does not plan to completely revise all of the criteria developed in 1980 or those updated as part of the proposed California Toxics Rule (CTR) 62 FR 42160, August 5, 1997. (This rule proposes for California, numeric water quality criteria for priority toxic pollutants necessary to fulfill the requirements of Section 303(c)(2)(b) of the CWA.) Further, EPA intends to revise 304(a) criteria on the basis of one or more components (e.g., BAF, fish intake, toxicological assessment) rather than a full set of components. Appendix II of the FR document discusses how the Agency is proposing to implement the methodology and revise the 304(a) criteria. EPA also discusses the role of 304(a) criteria in State/Tribal adoption of water quality standards under Section 303(c) of the CWA, EPA's responsibilities in reviewing and approving State/Tribal standards, and EPA's duties in regards to promulgating State/Tribal standards when necessary.

2. EPA encourages States and Tribes to use the revised methodology, once finalized, to develop or revise AWQC to

appropriately reflect local conditions. EPA believes that AWQC inherently require several risk management decisions that are, in many cases, better made at the State and Tribal level (*e.g.*, fish consumption rates, target risk levels). EPA will continue to develop and update necessary toxicological and exposure data needed in the derivation of AWQC that may not be practical for the States or Tribes to obtain. EPA encourages States and Tribes to use local or regional fish consumption data when available.

3. The equations for deriving AWQC include toxicological and exposure assessment parameters which are derived from scientific analysis, science policy, and risk management decisions. For example, parameters such as a field-measured BAF or a point of departure from an animal study (in the form of a LOAEL/NOAEL/LED_{10}) are scientific values which are empirically measured, whereas the decision to use animal effects as a surrogate for human effects involves judgment on the part of the EPA (and similarly, by other agencies) as to the best practice to follow when human data are lacking. Such a decision is, therefore, a matter of science policy. On the other hand, the choice of default fish consumption rates for protection of a certain percentage of the general population, is clearly a risk management decision. In many cases, the Agency has selected parameters using its best judgment regarding the overall protection afforded by the resulting AWQC when all parameters are combined. Appendix I discusses in detail the differences between science, science policy, and risk management. Appendix I also provides further details with regard to risk characterization as related to this methodology, with emphasis placed on explaining the uncertainties in the overall risk assessment.

4. The Draft AWQC Methodology Revisions provide an alternative to expressing AWQC as a water concentration. AWQC may also be expressed in terms of a fish tissue concentration. For some substances, particularly those that are expected to exhibit substantial bioaccumulation, the AWQC derived using the above equations may have extremely low values, possibly below the practical limits for detecting and quantifying the substance in the water column. It may, therefore, be more practical and meaningful in these cases to focus on the concentration of those substances in fish tissue, since fish ingestion would be the predominant source of exposure for substances that bioaccumulate.

5. EPA is proposing an incidental water ingestion exposure rate of 0.01 L/day to account for long-term incidental recreational ingestion (i.e., swimming, boating, fishing) for use in those cases where AWQC are developed for recreational waters that are not used as drinking water sources.

6. AWQC for the protection of human health are designed to minimize the risk of adverse effects occurring to humans from chronic (lifetime) exposure to substances through the ingestion of drinking water and consumption of fish obtained from surface waters. The Agency is not recommending the development of additional water quality criteria similar to the "drinking water health advisories" that focus on acute or short-term effects, since these are not seen routinely as having a meaningful role in the water quality criteria and standards program.

However, there may be some instances where the consideration of short-term toxicity and exposure in the derivation of AWQC is warranted. Although the AWQC are based on chronic health effects data (both cancer and noncancer effects), the criteria are intended to also be protective with respect to adverse effects that may reasonably be expected to occur as a result of elevated short-term exposures. That is, through the use of conservative assumptions with respect to both toxicity and exposure parameters, the resulting AWQC values should provide adequate protection not only for the general population over a lifetime of exposure, but also for special subpopulations who, because of high water- or fish-intake rates, or because of biological sensitivities, have an increased risk of receiving a dose that would elicit adverse effects from short-term exposures. The Agency recognizes, however, that there may be some cases where the AWQC values based on chronic toxicity may not provide adequate protection for a subpopulation at special risk from such exposures. The Agency encourages States, Tribes, and others employing the proposed methodology to give consideration to such circumstances in deriving criteria to ensure that adequate protection is afforded to all identifiable subpopulations. (Appendix III discusses this in greater detail.)

7. For noncarcinogens, risk managers may select another value within an RfD range rather than the default point estimate RfD value, in criteria development, where a rationale for the range and the value selected can be provided. General guidance for the use of values within the RfD range is provided based on the overall uncertainty associated with the RfD and when adverse health effects in children are not the basis for the RfD. For example, if the IRIS RfD is 1 mg/kg/day and the uncertainty factor (UF) is 1,000, a log-symmetrical order of magnitude around 1 mg/kg/day could be used resulting in a range of 0.3 to 3 mg/kg/day. If the UF were less than 1,000, the overall range would be reduced accordingly (*e.g.*, ½ log for UFs between 100 and 1,000; and no range for UFs of 100 or less). However, EPA would select the point estimate as a default (the midpoint within the range) when calculating a 304(a) criteria value for the purposes of promulgating State or Tribal water quality standards.

8. The Draft AWQC Methodology Revisions reflect EPA's 1996 Proposed Guidelines for Carcinogen Risk Assessment. For instance, mode of action (MoA) information is used to determine the most appropriate low-dose extrapolation approach for carcinogenic agents. The dose-response assessment under the new guidelines is a two-step process. In the first step, the response data are modeled in the range of empirical observation. Modeling in the observed range is done with biologically based or appropriate curve-fitting modeling. In the second step, extrapolation below the range of observation is accomplished by biologically based modeling if there are sufficient data or by a default procedure (linear, nonlinear, or both). A point of departure for extrapolation is estimated from modeling observed data. The lower 95 percent confidence limit on a dose associated with 10 percent extra risk (*i.e.*, LED_{10}) is proposed as a standard point of departure for low-dose extrapolation. If it is determined that the MoA understanding supports a nonlinear extrapolation, the AWQC is derived using the nonlinear default which is based on a margin of exposure (MoE) analysis for the point of departure (*e.g.*, the LED_{10}) and applying a safety factor(s) in the risk management. The linear default would be considered for those agents that are better supported by the assumption of linearity (*e.g.*, direct DNA reactive mutagens) for their MoA. A linear approach would also be applied when inadequate or no information is available to explain the carcinogenic MoA as a science policy choice in the interest of public health. The linear default is a straight line extrapolation to the origin (i.e., zero dose, zero extra risk) from the point of departure (*e.g.*, LED_{10}) identified in the observable response range. There may be situations where it is appropriate to apply both the linear and nonlinear

default procedures (*e.g.*, for an agent that is both DNA reactive and active as a promoter at higher doses).

9. For substances that are carcinogenic, particularly those for which the mode of action suggests nonlinearity at low doses, the Agency recommends that an integrated approach be taken in looking at cancer and noncancer effects, and if one pathway does not predominate, AWQC values should be determined for both carcinogenic and noncarcinogenic effects. The lower of the resulting values should be used for the AWQC.

10. When deriving AWQC for noncarcinogens and nonlinear carcinogens, a factor must be included to account for other nonwater exposure sources so that the entire RfD, or [Point of Departure (Pdp) divided by a safety factor (SF); (Pdp)/SF)] is not allocated to drinking water and fish consumption alone. Guidance is provided in the revised methodology for determining the factor, referred to as the relative source contribution (RSC), to be used for a particular chemical. The Agency is proposing the use of a decision tree procedure to support the determination of the appropriate RSC value for a given water contaminant. In the absence of data, the Agency will use 20 percent of the RfD as the default RSC in calculating a 304(a) criteria value for the purposes of promulgating State or Tribal water quality standards.

11. When deriving AWQC for linear carcinogens, the Agency recommends that risk levels in the range of 10^{-5} to 10^{-6} be used for the protection of the general population. States and Tribes can always choose a more stringent risk level, such as 10^{-7}. Care should be taken, however, in situations where the AWQC includes fish intake levels based on the general population to ensure that the risk to more highly exposed subgroups (sportfishers or subsistence fishers) does not exceed the 10^{-4} level.

12. The default fish consumption values are 17.80 grams/day for the general population, which represents the 90th percentile consumption rate for the entire population (and approximates the average consumption rate for sport anglers, nationally) and 86.30 grams/day for subsistence fishers/minority anglers, which represents the 99th percentile consumption rate for the general population and is within the range of average intakes for subsistence fishers/minority anglers (comments are requested on alternatively using 39.04 grams/day for subsistence fishers/minority anglers, which is lower in the range of averages). These values are derived from the United States Department of Agriculture's (USDA) Continuing Survey of Food Intake by Individuals (CSFII) from 1989–1991. These rates replace the single default value of 6.5 grams/day used in the 1980 AWQC National Guidelines. These default values are chosen to be protective of the majority of the individuals in those groups. However, States and Tribes are urged to use a fish intake level derived from local data on fish consumption in place of these default values when deriving AWQC, ensuring that the fish intake level chosen be protective of highly exposed individuals in the population. Consumption rates for women of childbearing age and children younger than 14 are also provided to maximize protection in those cases where these subpopulations may be at greatest risk.

13. All criteria should be derived using a BAF rather than a BCF, which was used in the 1980 AWQC National Guidelines. The BAF should be developed using the EPA methodology or any method consistent with the EPA method. EPA's highest preference in developing BAFs are BAFs based on field-measured data from local/regional fish.

14. EPA is neither setting organoleptic criteria nor a default methodology for deriving such criteria. Such criteria will necessitate case-by-case analysis.

The attached document includes six major sections: Appendix I, which discusses the purpose of the methodology, the background associated with the original methodology and the need for revision, and the major changes in the revised methodology; Appendix II, which addresses implementation issues associated with the methodology; Appendix III, which presents the main scientific areas that make up the methodology (cancer, noncancer, exposure, and bioaccumulation methods); and Appendices IV through VI, which present summaries of the three criteria developed for inclusion with the revised methodology. Complete versions of the three criteria documents are available on the Internet at http://www.epa.gov/OST/Rules/index.html#open.

This document proposes revisions to EPA's 1980 methodology for the development of water quality criteria to protect human health. The revisions reflect scientific advancements since 1980 in a number of areas, including cancer and noncancer risk assessments, exposure assessments and bioaccumulation. When final, the revised methodology will provide guidance to States, Tribes, and the public on the approach that EPA expects to take in developing recommended human health criteria. The revised methodology also will provide guidance to States and Tribes that they may use in developing human health criteria as part of their water quality standards; States and Tribes use such standards in implementing a number of environmental programs, including setting discharge limits in NPDES permits. The revised methodology does not substitute for the Clean Water Act or EPA's regulations; nor is it a regulation itself. Thus, the revised methodology cannot impose legally-binding requirements on EPA, States, or the public, and may not apply to a particular situation based upon the circumstances. EPA and State decisionmakers retain the discretion to use different, scientifically defensible, methodologies to develop human health criteria. EPA may change the methodology in the future.

This criteria methodology incorporates scientific advancements made over the past two decades. The use of this methodology is an important component of the Agency's efforts to improve the quality of the Nation's waters. EPA believes the methodology will enhance the overall scientific basis of water quality criteria. Further, the methodology should help States and Tribes address their unique water quality issues and risk management decisions, and afford them greater flexibility in developing their water quality programs.

Dated: August 3, 1998.

J. Charles Fox,

Acting Assistant Administrator for Water.

Appendix I. Background

A. Water Quality Criteria and Standards

1. Water Quality Criteria and the Criteria Derivation Methodology

EPA published the availability of ambient water quality criteria (AWQC) documents for 64 toxic pollutants and pollutant categories identified in Section 307(a) of the Clean Water Act (CWA) in the **Federal Register** on November 28, 1980 (45 FR 79318). The November 1980 **Federal Register** document also summarized the criteria documents and discussed in detail the methods used to derive the AWQC for those pollutants. The AWQC for those 64 pollutants and pollutant categories were published pursuant to Section 304(a)(1) of the CWA:

"The Administrator, * * * shall develop and publish, * * *, (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines,

beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on the biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters."

The AWQC published in November 1980 provided two essential types of information: (1) discussions of available scientific data on the effects of the pollutants on public health and welfare, aquatic life, and recreation; and (2) quantitative concentrations or qualitative assessments of the levels of pollutants in water which, if not exceeded, will generally ensure adequate water quality for a specified water use. Water quality criteria developed under Section 304(a) are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects. The 304(a) criteria do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water. As discussed below, 304(a) criteria may be used as guidance by States and Tribes to establish water quality standards, which ultimately provide a basis for controlling discharges or releases of pollutants.

The 1980 AWQC were derived using guidelines and methodologies developed by the Agency for calculating the impact of waterborne pollutants on aquatic organisms and on human health. Those guidelines and methodologies consisted of systematic procedures for assessing valid and appropriate data concerning a pollutant's acute and chronic adverse effects on aquatic organisms, nonhuman mammals, and humans. The guidelines and methodologies were fully described in Appendix B (for protection of aquatic life and its uses) and Appendix C (for protection of human health) of the November 1980 **Federal Register** document.

This revised methodology addresses the development of AWQC to protect human health; a similar process to revise the methodology for deriving AWQC for the protection of aquatic life is currently underway at the Agency. When finalized, the Agency intends to use the revised AWQC human health methodology to both develop new AWQC for additional chemicals and to revise existing AWQC. Appendices IV–VI are summaries of criteria developed using the revised methodology. These AWQC were developed to demonstrate the different risk assessment and exposure approaches presented in the revised methodology. The complete criteria documents are available from NTIS or on EPA's Internet web site. In addition, EPA intends to derive AWQC for the protection of human health for several chemicals of high priority, including but not limited to, PCBs, lead, mercury, arsenic, and dioxin, within the next several years. EPA anticipates that the focus of 304(a) criteria development will be criteria for bioaccumulative chemicals and chemicals considered highest priority by the Agency. The Draft AWQC Methodology Revisions presented here are also intended to provide States and Tribes flexibility in setting water quality standards by providing scientifically valid options for developing their own water quality criteria that consider local conditions. States and Tribes are encouraged to use the methodology once it is finalized to derive their own AWQC. However, the revised methodology also defines the default factors EPA intends to use in evaluating and determining consistency of State water quality standards with the requirements of the CWA. The Agency intends to use these default factors to calculate water quality criteria when promulgating water quality standards for a State or Tribe under Section 303(c) of the Act.

2. Summary of the 1980 AWQC National Guidelines

The 1980 AWQC National Guidelines for developing AWQC for the protection of human health addressed three types of endpoints: noncancer, cancer, and organoleptic (taste and odor) effects. Criteria values for protection against noncancer and cancer effects were estimated by using risk assessment-based procedures, including extrapolation from animal toxicity or human epidemiological studies. Basic human exposure assumptions were applied, such as: the exposed individual is a 70-kilogram adult male; the assumed consumption of freshwater and estuarine fish and shellfish is 6.5 grams per day; and the assumed ingestion rate of drinking water is 2 liters per day.

When using cancer as the critical risk assessment endpoint, which has been assumed not to have a threshold, the AWQC were presented as a range of concentrations associated with specified incremental lifetime risk levels [1] (*i.e.*, a range from 10^{-5} to 10^{-7}). When using noncancer effects as the endpoint, the AWQC reflected an assessment of a "no-effect" level, since noncancer effects generally exhibit a threshold. The risk assessment-based procedures used to derive the AWQC to protect human health were specific to whether the endpoint was cancer or noncancer. The key features of each procedure are described briefly in the following sections.

Cancer effects. If human or animal studies on a contaminant indicated that it induced a statistically significant carcinogenic response, the 1980 AWQC National Guidelines treated the contaminant as a carcinogen and derived a low-dose cancer potency factor from available animal data using the linearized multistage model (LMS). The LMS, which uses a linear, nonthreshold assumption for low-dose risk, was used by the Agency as a science policy choice in protecting public health, and represents the most plausible upper limit for low-dose risk. The cancer potency factor, which expresses incremental, lifetime risk as a function of the rate of intake of the contaminant, was then combined with exposure assumptions to express that risk in terms of an ambient water concentration. In the 1980 AWQC National Guidelines, the Agency presented a range of contaminant concentrations corresponding to incremental cancer risks of 10^{-7} to 10^{-5} (that is, a risk of one additional case of cancer in a population of ten million to one additional cancer case in a population of one hundred thousand, respectively). The risk range was presented for information purposes and did not represent an Agency judgment on "acceptable" risk level. The Agency stated in 1980 that: "for the maximum protection of human health from the potential carcinogenic effects due to exposure of Chemical X through ingestion of contaminated water and aquatic organisms, the ambient water concentration should be zero based on the nonthreshold assumption for this chemical. However, zero level may not be attainable at the present time. Therefore, the levels which may result in incremental cancer risk over the lifetime are estimated at 10^{-5}, 10^{-6}, and 10^{-7}."

Noncancer effects. If the pollutant was not considered to have the potential for causing cancer in humans (this was later defined as a known, probable, or possible human carcinogen by the 1986 Guidelines for Cancer Risk), the 1980 AWQC National Guidelines treated the contaminant as a noncarcinogen, and a criterion was derived using a threshold

[1] Throughout this document, the term "risk level" regarding a cancer assessment endpoint specifically refers to an upper-bound estimate of excess lifetime cancer risk.

concentration for noncancer adverse effects. The criteria derived from noncancer data were based on the Acceptable Daily Intake (ADI) (now termed the reference dose [RfD]). ADI values were generally derived using no-observed- adverse-effect level (NOAEL) data from animal studies, although human data were used whenever available. The ADI was calculated by dividing the NOAEL by an uncertainty factor to account for uncertainties inherent in extrapolating toxicological data from animal studies to humans. In accordance with the National Research Council recommendations of 1977, safety factors (later termed uncertainty factors) of 10, 100, or 1,000 were used, depending on the quality and quantity of the data.

Organoleptic effects. Organoleptic characteristics were also used in developing criteria for some contaminants to control undesirable taste and/or odor imparted by them to ambient water. In some cases, a water quality criterion based on organoleptic effects would be more stringent than a criterion based on toxicologic endpoints. The 1980 AWQC National Guidelines emphasized that criteria derived for organoleptic endpoints are not based on toxicologic information, have no direct relationship to adverse human health effects and, therefore, do not necessarily represent approximations of acceptable risk levels for humans.

3. Water Quality Standards

Under Section 303 of the CWA, States have the primary responsibility to establish water quality standards, defined under the Act as designated beneficial uses of a water segment and the water quality criteria necessary to support those uses. Additionally, Native American Tribes authorized to administer the water quality standards program under 40 CFR 131.8 establish water quality standards for waters within their jurisdictions. This statutory framework allows States and Tribes to work with local communities to establish appropriate designated uses, and adopt criteria to protect those designated uses. Section 303 provides for EPA review of Water Quality Standards and for promulgation of a superseding Federal rule in cases where State or Tribal standards are not consistent with the applicable requirements of the CWA, or in situations where the Agency determines Federal standards are necessary to meet the requirements of the Act. Section 303(c)(2)(B) specifically requires States and Tribes to adopt AWQC for toxics for which EPA has published criteria under Section 304(a), and for which the discharge or presence could reasonably be expected to interfere with the designated use adopted by the State or Tribe. In adopting such criteria, States and Tribes must establish numerical values based on one of the following: (1) 304(a) criteria; (2) 304(a) criteria modified to reflect site-specific conditions; or, (3) other scientifically defensible methods.

In order to avoid confusion, it must be recognized that the Act uses the term "criteria" in two separate ways. In Section 303(c), the term is part of the definition of a water quality standard. That is, a water quality standard is composed of designated uses and the criteria necessary to protect those uses. Thus, States and Tribes are required to adopt regulations which contain legally enforceable criteria. However, in Section 304(a) the term criteria is used to describe the scientific information that EPA develops to be used as guidance in the State, Tribal, or Federal adoption of water quality standards pursuant to 303(c). Thus, two distinct purposes are served by the 304(a)criteria. The first is as guidance to the States and Tribes in the development and adoption of water quality criteria which will protect designated uses, and the second is as the basis for promulgation of a superseding Federal rule when such action is necessary.

B. Need for Revision of the 1980 AWQC National Guidelines

1. Scientific Advances Since 1980

Since 1980, EPA risk assessment practices have evolved significantly, particularly in the areas of cancer and noncancer risk assessments, exposure assessments, and bioaccumulation. In cancer risk assessment, there have been advances with respect to the use of mode of action information to support both the identification of carcinogens and the selection of procedures to characterize risk at low, environmentally relevant exposure levels. Related to this is the development of new procedures to quantify cancer risk at low doses to replace the current default use of the LMS model. (See discussion in Appendix III, Section A.) In noncancer risk assessment, the Agency is moving toward the use of the benchmark dose (BMD) and other dose-response approaches in place of the traditional NOAEL approach to estimate a reference dose or concentration. A BMD is calculated by fitting a mathematical dose-response model to data using appropriate statistical procedures. (See discussion in Appendix III, Section B.)

In exposure analysis, several new studies have addressed water consumption and fish-tissue consumption. These studies provide a more current and comprehensive description of national, regional, and special-population consumption patterns that EPA has reflected in the Draft AWQC Methodology Revisions presented today. In addition, more formalized procedures are now available to account for human exposure from multiple sources when setting health goals such as AWQC that address only one exposure source. (See discussion in Appendix III, Section C.)

With respect to bioaccumulation, the Agency has moved toward the use of a bioaccumulation factor (BAF) to reflect the uptake of a contaminant from all sources (*e.g.*, ingestion, sediment) by fish and shellfish, rather than just from the water column as reflected by the use of a bioconcentration factor (BCF) as included in the 1980 methodology. The Agency has also developed detailed procedures and guidelines for estimating BAF values. (See discussion in Appendix III, Section D.)

2. EPA Human Health Risk Assessment Guidelines Development Since 1980

When the 1980 AWQC methodology was developed, EPA had not yet developed formal cancer or noncancer risk assessment guidelines. Since then EPA has published several risk assessment guidelines documents. In 1996, the Agency proposed revised guidelines for carcinogenic risk assessment (61 FR 17960) which when finalized will supersede the carcinogenic risk assessment guidelines published in 1986 (51 FR 33992). In addition, guidelines for mutagenicity assessment were also published in 1986 (51 FR 34006). The Agency also issued guidelines for assessing the health risks to chemical mixtures in 1986 (51 FR 34014). With respect to noncancer risk assessment, the Agency published guidelines in 1988 for assessing male and female reproductive risk (53 FR 24834) and in 1991 for assessing developmental toxicity (56 FR 63798). The guidelines for assessing reproductive toxicity were subsequently updated and finalized (61 FR 56274) in 1996. In 1991, the Agency also developed an external review draft of revised risk assessment guidelines for noncancer health effects. In 1995, EPA also proposed guidelines for neurotoxicity risk assessment (60 FR 52032).

In addition to these risk assessment guidelines, EPA also published the

"Exposure Factors Handbook" in 1989, which presents commonly used Agency exposure assumptions and the surveys from which they are derived. The Exposure Factors Handbook (EPA/600/P–95/002Fa) was updated in 1997. In 1992 EPA published the revised Guidelines for Exposure Assessment (57 FR 22888), which describe general concepts of exposure assessment, including definitions and associated units, and provide guidance on planning and conducting an exposure assessment. Also, in the 1980s the Agency published the Total Exposure Assessment Methodology (TEAM), which presents a process for conducting comprehensive evaluation of human exposures. The Agency has recently developed the Relative Source Contribution Policy, which is currently undergoing Agency review, for assessing total human exposure to a contaminant and allocating the RfD among the media of concern. In 1997, EPA developed draft Guiding Principles for Monte Carlo analysis.

Also, in 1986, the Agency made available to the public the Integrated Risk Information System (IRIS). IRIS is a data base that contains risk information on the cancer and noncancer effects of chemicals. The IRIS assessments are peer reviewed and represent EPA consensus positions across the Agency's program and regional offices. In 1995, the Agency initiated an IRIS pilot program to test improvements to the internal peer review and consensus processes, and to provide more integrated characterizations of cancer and noncancer health effects.

3. Differing Risk Assessment and Risk Management Approaches for AWQC and MCLGs

There are some differences in the risk assessment and risk management approaches used by EPA's Office of Water for the derivation of AWQC under the authority of the CWA and MCLGs (Maximum Contaminant Level Goals) under the Safe Drinking Water Act (SDWA). Two notable differences are with respect to the treatment of chemicals designated as Group C possible human carcinogens under the 1986 Guidelines for Carcinogen Risk Assessment and the consideration of nonwater sources of exposure when setting an AWQC or MCLG for a noncarcinogen.

Group C Chemicals. Chemicals have been typically classified as Group C—*i.e.*, possible human carcinogens—under the existing (1986) EPA cancer classification scheme for any of the following reasons:

1. Carcinogenicity has been documented in only one test species and/or only one cancer bioassay and the results do not meet the requirements of "sufficient evidence."

2. Tumor response is of marginal significance due to inadequate design or reporting.

3. Benign, but not malignant, tumors occur with an agent showing no response in a variety of short-term tests for mutagenicity.

4. There are responses of marginal statistical significance in a tissue known to have a high or variable background rate.

The 1986 Guidelines for Carcinogen Risk Assessment specifically recognized the need for flexibility with respect to quantifying the risk of Group C agents. The guidelines noted that agents judged to be in Group C, possible human carcinogens, may generally be regarded as suitable for quantitative risk assessment, but that case-by-case judgments may be made in this regard.

The EPA Office of Water has historically treated Group C chemicals differently under the CWA and the SDWA. It is important to note that the 1980 AWQC National Guidelines for setting AWQC under the CWA predated EPA's carcinogen classification system, which was proposed in 1984 (49 FR 46294) and finalized in 1986 (51 FR 33992). The 1980 AWQC National Guidelines did not explicitly differentiate among agents with respect to the weight-of-evidence for characterizing them as likely to be carcinogenic to humans. For all pollutants judged as having adequate data for quantifying carcinogenic risk—including those now classified as Group C—AWQC were derived based on data on cancer incidence. In the November 1980 **Federal Register** document, EPA emphasized that the AWQC for carcinogens should state that the recommended concentration for maximum protection of human health is zero. At the same time, the criteria published for specific carcinogens presented water concentrations for these pollutants corresponding to individual lifetime cancer risk levels in the range of 10^{-7} to 10^{-5}.

In the development of national primary drinking water regulations under the SDWA, EPA is required to promulgate a health-based MCLG for each contaminant. The Agency policy has been to set the MCLG at zero for chemicals with strong evidence of carcinogenicity associated with exposure from water. For chemicals with limited evidence of carcinogenicity, including many Group C agents, the MCLG is usually obtained using an RfD based on its noncancer effects with the application of an additional uncertainty factor of 1 to 10 to account for its possible carcinogenicity. If valid noncancer data for a Group C agent are not available to establish an RfD but adequate data are available to quantify the cancer risk, then the MCLG is based upon a nominal lifetime excess cancer risk calculation in the range of 10^{-5} to 10^{-6} (ranging from one case in a population of one hundred thousand to one case in a population of one million). Even in those cases where the RfD approach has been used for the derivation of the MCLG for a Group C agent, the drinking water concentrations associated with excess cancer risks in the range of 10^{-5} to 10^{-6} were also provided for comparison.

It should also be noted that EPA's pesticides program has applied both of the previously described methods for addressing Group C chemicals in actions taken under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and finds both methods applicable on a case-by-case basis. Unlike the drinking water program, however, the pesticides program does not add an extra uncertainty factor to account for potential carcinogenicity when using the RfD approach.

Consideration of Nonwater Sources of Exposure. The 1980 AWQC National Guidelines for setting AWQC recommended the use of the following equation to derive the criterion:

$$C = \frac{[ADI - (DT + IN)]}{[2 + 0.0065R]} \quad \text{(Equation IB-1)}$$

where:

C=The criterion value
ADI=Acceptable daily intake (mg/kg-day)
DT=Non-fish dietary intake (mg/kg-day)
IN=Inhalation intake (mg/kg-day)
2=Assumed daily water intake (L/day)
0.0065=Assumed daily fish consumption (kg)
R=Bioconcentration factor (L/kg)

As implied by this equation, the contributions from nonwater sources, namely air and non-fish dietary intake, were to be subtracted from the ADI, thus reducing the amount of the ADI "available" for water-related sources of intake. In practice, however, when calculating human health criteria, these other exposures were generally not considered because reliable data on these exposure pathways were not available. Consequently, the AWQC were usually derived such that drinking water and fish ingestion accounted for the entire ADI (now called RfD).

In the drinking water program, a similar "subtraction" method was used

in the derivation of MCLGs proposed and promulgated in drinking water regulations through the mid-1980s. More recently, the drinking water program has consistently used a "percentage" method in the derivation of MCLGs for noncarcinogens. In this approach, the percentage of total exposure typically accounted for by drinking water, referred to as the relative source contribution (RSC), is applied to the RfD to determine the maximum amount of the RfD "allocated" to drinking water reflected by the MCLG value. In using this percentage procedure, the drinking water program also applies a ceiling level of 80 percent of the RfD and a floor level of 20 percent of the RfD. That is, the MCLG cannot account for more than 80 percent of the RfD, nor less than 20 percent of the RfD.

The drinking water program usually takes a conservative public health approach of applying an RSC factor of 20 percent to the RfD when adequate exposure data do not exist, assuming that the major portion (80 percent) of the total exposure comes from other sources, such as diet.

Cancer Risk Ranges. In addition to the different risk assessment approaches discussed above for deriving AWQC and MCLGs for Group C agents, different risk management approaches have arisen between the drinking water and ambient surface water programs with respect to using lifetime excess risk values when setting health-based criteria for carcinogens. As indicated previously, the surface water program has derived AWQC for carcinogens that generally correspond to lifetime excess cancer risk levels of 10^{-7} to 10^{-5}. The drinking water program has set MCLGs for Group C agents based on a slightly less stringent risk range of 10^{-6} to 10^{-5}, while MCLGs for chemicals with strong evidence of carcinogenicity (that is, classified as Group A, known, or B probable, human carcinogen) are set at zero.

It is also important to note that under the drinking water program, for those substances having an MCLG of zero, enforceable Maximum Contaminant Levels (MCLs) have generally been promulgated to correspond with cancer risk levels ranging from 10^{-6} to 10^{-4}. Unlike AWQC and MCLGs which are strictly health-based criteria, MCLs are developed with consideration given to the costs and technological feasibility of reducing contaminant levels in water to meet those standards.

C. Steps Taken Toward Evaluating and Revising the 1980 AWQC National Guidelines

In order to begin developing a "state-of-the-science" approach to revising the 1980 AWQC National Guidelines, EPA prepared an issues paper that described the 1980 methodology, discussed areas that needed strengthening, and proposed revisions. This paper was then distributed for review and comment to experts at EPA headquarters, regional offices, and laboratories; other Federal Agencies, such as the Food and Drug Administration (FDA), the National Institute of Environmental Health Sciences (NIEHS), and the Centers for Disease Control and Prevention (CDC); State health organizations; Canadian health agencies; academe; and environmental, industry, and consulting organizations.

1. September 1992 National Workshop

On September 13–16, 1992. more than 100 invited participants discussed the critical issues in a workshop convened in Bethesda, Maryland. Based on their expertise, attendees were assigned to specific technical work groups. The work group topics were cancer risk, noncancer risk, exposure, microbiology, minimum data, and bioaccumulation. Each work group member received a set of detailed questions that served to focus discussions on critical factors in the 1980 AWQC National Guidelines. After the work group members deliberated separately on their specific technical areas, all workshop participants were given the opportunity to comment on the proceedings. After the workshop concluded, the chairperson for each technical work group prepared a written summary of that group's deliberations and recommendations. Each work group participant was given the opportunity to review and comment on the summaries; these comments were used to prepare an initial draft of the revised methodology.

2. Science Advisory Board Review

After review of the initial draft of the revisions to the methodology by EPA, the workshop participants, and other relevant parties, a summary document was submitted for review and comment to the Science Advisory Board (SAB) in January 1993 and presented to the Drinking Water Committee of the SAB during its meeting on February 8–9, 1993. The SAB presented its official comments to EPA on August 12, 1993. The SAB comments have been highlighted and addressed in each of the technical areas discussed in Appendix III of this document. A complete copy of the document submitted to the SAB and SAB's comments are available in the docket supporting this Notice.

3. FSTRAC Review

At the Federal State Toxicology and Risk Analysis Committee (FSTRAC) meeting on December 1–3, 1993, in Washington, D.C., several State representatives presented their opinions on the initial draft revised methodology and the SAB's comments. A summary of this meeting is presented in a document entitled "Summary Report: State Comments on the Proposed Revision of the Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health." This document is also available for review in the docket supporting this Notice.

4. Water Quality Guidance for the Great Lakes System

In March 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (60 FR 15366). The Great Lakes Water Quality Guidance, developed under Section 118(c)(2) of the CWA, provides water quality criteria for 29 pollutants as well as methodologies, policies, and procedures for Great Lakes States and Tribes to establish consistent, long-term protection for fish and shellfish in the Great Lakes and their tributaries, as well as for the people and wildlife who consume them. In developing the methodology to derive human health criteria for the waters of the Great Lakes System, the Agency was mindful of the need for consistency with the planned changes in the methodology for deriving national AWQC for the protection of human health presented today. Throughout the following text, references are made to comparisons of the two methodologies, national and Great Lakes Water Quality Guidance, especially whenever differences occur due to regional exposure assumptions made for the Great Lakes System.

D. Overview of AWQC Methodology Revisions, Major Changes, and Issues

Following is a summary of the major revisions to the 1980 AWQC National Guidelines:

1. EPA's future role in developing AWQC for the protection of human health will include the refinement of the revised methodology, the development of revised criteria for chemicals of high priority and national importance (including, but not limited to chemicals that bioaccumulate, such as PCBs, TCDD-dioxin, and mercury), and the development or revision of AWQC for some additional priority chemicals. EPA does not plan to completely revise all of

the criteria developed in 1980 or those updated as part of either the 1992 National Toxics Rule (NTR) or the 1997 proposed California Toxics Rule (CTR). Partial updates of all criteria may be plausible. (Appendix II discusses how the Agency is proposing to implement the methodology and update or revise the 304(a) criteria.)

2. EPA encourages States and Tribes to use the revised methodology, once finalized, to develop or revise AWQC to appropriately reflect local conditions. EPA believes that AWQC inherently require several risk management decisions that are, in many cases, better made at the State, Tribal, and local level (*e.g.*, fish consumption rates, target risk levels). EPA will continue to develop and update necessary toxicological and exposure data needed to use in the derivation of AWQC that may not be practical to obtain at the State, Tribal, or local level. EPA encourages States and Tribes to use local or regional fish consumption data when available.

3. The following equations for deriving AWQC include toxicological and exposure assessment parameters which are derived from scientific analysis, science policy, and risk management decisions. For example, parameters such as a field-measured BAF or a point of departure from an animal study (in the form of a LOAEL/NOAEL/LED_{10}) are scientific values which are empirically measured, whereas the decision to use animal effects as a surrogate for human effects involves judgment on the part of the EPA (and similarly, by other agencies) as to the best practice to follow when human data are lacking. Such a decision is, therefore, a matter of science policy. On the other hand, the choice of default fish consumption rates for protection of a certain percentage (in this case, 90 percent and 95 percent respectively) of the general population, is clearly a risk management decision. In many cases, the Agency has selected parameters using its best judgment regarding the overall protection afforded by the resulting AWQC when all parameters are combined. For a longer discussion of the differences between science, science policy, and risk management, please refer to Section E. Section E also provides further details with regard to risk characterization as related to this methodology, with emphasis placed on explaining the uncertainties in the overall risk assessment.

The generalized equations for deriving AWQC based on noncancer effects are: [2]

Noncancer Effects [3]

$$AWQC = RfD \cdot RSC \cdot \left(\frac{BW}{DI + (FI \cdot BAF)} \right) \qquad \text{(Equation ID-1)}$$

Nonlinear Cancer Effects

$$AWQC = \frac{Pdp}{SF} \cdot RSC \cdot \left(\frac{BW}{DI + (FI \cdot BAF)} \right) \qquad \text{(Equation ID-2)}$$

Linear Cancer Effects

$$AWQC = RSC \cdot \left(\frac{BW}{DI + (FI \cdot BAF)} \right) \qquad \text{(Equation ID-3)}$$

where:

AWQC=Ambient Water Quality Criterion (mg/L)

RfD=Reference dose for noncancer effects (mg/kg-day)

Pdp=Point of departure for nonlinear carcinogens (mg/kg-day), usually a LOAEL, NOAEL, or LED_{10}

SF=Safety Factor for nonlinear carcinogens (unitless)

RSD=Risk-specific dose for linear carcinogens (mg/kg-day) (Dose associated with a target risk, such as 10^{-6})

RSC=Relative source contribution factor to account for nonwater sources of exposure. (Not used for linear carcinogens.) May be either a percentage (multiplied) or amount subtracted, depending on whether multiple criteria are relevant to the chemical.

BW=Human body weight (proposed default=70 kg for adults)

DI=Drinking water intake (proposed default=2 L/day for adults)

FI=Fish intake (proposed defaults=0.01780 kg/day for general adult population and sport anglers, and 0.08630 kg/day for subsistence fishers)

BAF=Bioaccumulation factor, lipid normalized (L/kg)

4. As an alternative to expressing AWQC as a water concentration as provided in the above equations, AWQC may also be expressed in terms of a fish tissue concentration. For some substances, particularly those that are expected to exhibit substantial bioaccumulation, the AWQC derived using the above equations may have extremely low values, possibly below the practical limits for detecting and quantifying the substance in the water column. It may, therefore, be more practical and meaningful in these cases to focus on the concentration of those substances in fish tissue, since fish ingestion would be the predominant source of exposure for substances that bioaccumulate. Fish tissue criteria that correspond to an AWQC expressed as a water concentration obtained from one of the above equations is computed as (note, the BAF used should be the same one that was used to calculate the AWQC):

[2] The fish intake (FI) and bioaccumulation factor (BAF) parameters are presented here in simplified form. It is preferable to calculate criteria by splitting these out by trophic level since bioaccumulation may vary significantly from one level to another. This is discussed further in the bioaccumulation section and specific guidance is given in the Technical Support Document for this methodology. Also, the proposed example criteria that accompany these proposed revisions use trophic level breakouts for these parameters.

[3] Although appearing in this equation as a factor to be multiplied, the RSC can also be an amount subtracted. Refer to the explanation key below the equations.

Fish Tissue Criteria (mg/kg or ppm) = AWQC (mg/L) · BAF (L/kg) (Equation ID-4)

5. EPA is recommending an incidental water ingestion exposure rate of 0.01 L/day to account for long-term incidental recreational ingestion (i.e., swimming, boating, fishing) for use in those cases where AWQC are developed for recreational waters that are not used as drinking water sources.

6. AWQC for the protection of human health are designed to minimize the risk of adverse effects occurring to humans from chronic (lifetime) exposure to substances through the ingestion of drinking water and consumption of fish obtained from surface waters. The Agency is not recommending the development of additional water quality criteria similar to the "drinking water health advisories" that focus on acute or short-term effects, since these are not seen routinely as having a meaningful role in the water quality criteria and standards program. However, as discussed below, there may be some instances where the consideration of acute or short-term toxicity and exposure in the derivation of AWQC is warranted.

Although the AWQC are based on chronic health effects data (both cancer and noncancer effects), the criteria are intended to also be protective with respect to adverse effects that may reasonably be expected to occur as a result of elevated acute or short-term exposures. That is, through the use of conservative assumptions with respect to both toxicity and exposure parameters, the resulting AWQC values should provide adequate protection not only for the general population over a lifetime of exposure, but also for special subpopulations who, because of high water- or fish-intake rates, or because of biological sensitivities, have an increased risk of receiving a dose that would elicit adverse effects. The Agency recognizes, however, that there may be some cases where the AWQC values based on chronic toxicity may not provide adequate protection for a subpopulation at special risk from shorter-term exposures. The Agency encourages States, Tribes, and others employing the revised methodology to give consideration to such circumstances in deriving criteria to ensure that adequate protection is afforded to all identifiable subpopulations. (See Appendix III, Section C.3 for additional discussion of these subpopulations.)

7. For noncarcinogens, risk managers may select an RfD range rather than a single RfD value, in criteria development, where a rationale for the range and the value selected can be provided. General guidance for the use of values within the RfD range is provided based on the overall uncertainty associated with the RfD. For example, if the IRIS RfD is 1 mg/kg/day and the uncertainty factor (UF) is 1,000, a log-symmetrical order of magnitude (*i.e.*, 10-fold) around 1 mg/kg/day could be used resulting in a range of 0.3 to 3 mg/kg/day. If the UF were less than 1,000, the overall range would be reduced accordingly (*i.e.*, ½ log (3-fold) for UFs between 100 and 1,000, resulting in a range of 0.67 to 1.5 mg/kg/day; and no range for UFs of 100 or less). However, EPA intends to select the point estimate as a default (the midpoint within the range) when calculating a 304(a) criteria value for the purposes of promulgating State or Tribal water quality standards. Furthermore, an RfD range should not be used when children are identified as the exposed population of concern.

8. As explained in EPA's 1996 Proposed Guidelines for Carcinogen Risk Assessment, mode of action (MoA) information is used to determine the most appropriate low-dose extrapolation approach for carcinogenic agents. The dose-response assessment under the new guidelines is a two- step process. In the first step, the response data are modeled in the range of empirical observation. Modeling in the observed range is done with biologically based or appropriate curve-fitting modeling. In the second step, extrapolation below the range of observation is accomplished by biologically based modeling if there are sufficient data or by a default procedure (linear, nonlinear, or both). A point of departure for extrapolation is estimated from modeling observed data. The lower 95 percent confidence limit on a dose associated with 10 percent extra risk (LED_{10}) is proposed as a standard point of departure for low-dose extrapolation. If it is determined that the MoA understanding supports a nonlinear extrapolation, the AWQC is derived using the nonlinear default which is based on a margin of exposure (MoE) analysis for the point of departure (LED_{10}) and applying a margin of safety (MoS) in the risk management. The linear default would be considered for those agents that are better supported by the assumption of linearity (*e.g.*, direct DNA reactive mutagens) for their MoA. A linear approach would also be applied when inadequate or no information is available to explain the carcinogenic MoA as a science policy choice in the interest of public health. The linear default is a straight line extrapolation to the origin (*i.e.*, zero dose, zero extra risk) from the point of departure (LED_{10}) identified in the observable response range. There may be situations where it is appropriate to apply both the linear and nonlinear default procedures (*e.g.*, for an agent that is both DNA reactive and active as a promoter at higher doses).

9. For substances that are carcinogenic, particularly those for which the mode of action suggests nonlinearity at low doses, the Agency recommends that an integrated approach be taken in looking at cancer and noncancer effects, and if one pathway does not predominate, AWQC values should be determined for both carcinogenic and noncarcinogenic effects. The lower of the resulting values should be used for the AWQC.

10. When deriving AWQC for noncarcinogens and nonlinear carcinogens, a factor must be included to account for other nonwater exposure sources so that the entire RfD, or [Point of Departure (Pdp) divided by a safety factor (SF) (Pdp)/SF)] is not allocated to drinking water and fish consumption alone. Guidance is provided in the revised methodology for determining the factor, referred to as the RSC, to be used for a particular chemical. The Agency is recommending the use of a decision tree procedure to support the determination of the appropriate RSC value for a given water contaminant. In the absence of data, the Agency intends to use 20 percent of the RfD as the default RSC in calculating a 304(a) criteria value for the purposes of promulgating State or Tribal water quality standards.

11. For AWQC derived for linear carcinogens, the Agency recommends that risk levels in the range of 10^{-5} to 10^{-6} be used. (See RSD factor in Equation ID–3, above.) States and Tribes can always choose a more stringent risk level, such as 10^{-7}. Care should be taken, however, in situations where the AWQC includes fish intake levels based on the general population to ensure that the risk to more highly exposed subgroups (sportfishers or subsistence fishers) does not exceed the 10^{-4} level.

12. The default fish consumption values in the revised methodology are 17.80 grams/day for the general adult population, which represents the 90th percentile consumption rate for the entire adult population (and approximates the average consumption

rate for sport anglers, nationally); and 86.30 grams/day for subsistence fishers/minority anglers, which represents the 99th percentile consumption rate for the general population and falls within the range of averages for subsistence/minority anglers. Public comments are requested on alternatively using 39.04 grams/day, which represents the 95th percentile (and is also within the range of averages), and which of these two values (*i.e.*, 39.04 or 86.30 grams/day) is more representative of fresh/estuarine fish consumption among subsistence fishers/minority anglers. These values are derived from the United States Department of Agriculture's (USDA) Continuing Survey of Food Intake by Individuals (CSFII) from 1989–1991. These rates replace the single default value of 6.5 grams/day used in the 1980 AWQC National Guidelines. These default values are chosen to be protective of the majority of the individuals in those groups. However, States and Tribes are urged to use a fish intake level derived from local data on fish consumption in place of these default values when deriving AWQC, ensuring that the fish intake level chosen be protective of highly exposed individuals in the population. Consumption rates for women of childbearing age and children younger than 14 are also provided to maximize protection in those cases where these subpopulations may be at greatest risk.

13. In the revised methodology, criteria are derived using a BAF rather than a BCF, which was used in the 1980 AWQC National Guidelines. To derive the BAF, States and Tribes may use EPA's methodology or any method consistent with the EPA method. EPA's highest preference in developing BAFs are BAFs based on field-measured data from local/regional fish.

14. EPA is neither setting organoleptic criteria nor recommending a default methodology for deriving such criteria. Such criteria will necessitate case-by-case analysis.

E. Risk Characterization Considerations

1. Background

On March 21, 1995, the EPA Administrator, Carol Browner, issued the EPA Risk Characterization Policy and Guidance. This policy and guidance is intended to ensure that characterization information from each stage of a risk assessment is used in forming conclusions about risk and that this information is communicated from risk assessors to risk managers, and from EPA to the public. The policy also provides the basis for greater clarity, transparency, reasonableness, and consistency in risk assessments across EPA programs. The fundamental principles which form the basis for a risk characterization are as follows:

- Risk assessments should be transparent, in that the conclusions drawn from the science are identified separately from policy judgments, and the use of default values or methods and the use of assumptions in the risk assessment are clearly articulated.
- Risk characterizations should include a summary of the key issues and conclusions of each of the other components of the risk assessments, as well as describe the likelihood of harm. The summary should include a description of the overall strengths and limitations (including uncertainties) of the assessment and conclusions.
- Risk characterizations should be consistent in general format, but recognize the unique characteristics of each specific situation.
- Risk characterizations should include, at least in a qualitative sense, a discussion of how a specific risk and its context compares with similar risks. This may be accomplished by comparisons with other chemicals or situations on which the Agency has decided to act, or other situations with which the public may be familiar. The discussion should highlight the limitations of such comparisons.
- Risk characterization is a key component of risk communication, which is an interactive process involving exchange of information and expert opinion among individuals, groups, and institutions.

2. Additional Guiding Principles

- The risk characterization integrates the information from the hazard identification, dose-response, and exposure assessments, using a combination of qualitative information, quantitative information, and information regarding uncertainties.
- The risk characterization includes a discussion of uncertainty and variability.
- Well-balanced risk characterizations present conclusions and information regarding the strengths and limitations of the assessment for other risk assessors, EPA decision-makers, and the public.

3. Risk Characterization Applied to the Revised AWQC Methodology

In developing the methodology presented today, the EPA has closely followed the risk characterization guiding principles listed above. As States and Tribes develop criteria using the revised methodology, they are strongly encouraged to follow EPA's risk characterization guidance. There are a number of areas within the methodology and criteria development process where risk characterization principles apply:

- Integration of cancer and noncancer assessments with exposure assessments, including bioaccumulation potential determinations, in essence, weighing the strengths and weaknesses of the risk assessment as a whole when developing a criterion.
- Selecting a fish consumption rate, locally derived or default value, within the context of a target population (*e.g.*, sensitive subpopulations) as compared to the general population.
- Presenting cancer and/or noncancer risk assessment options.
- Describing the uncertainty and variability in both the hazard identification, the dose-response and the exposure assessment.

Health Risks to Children.

In recognition that children have a special vulnerability to many toxic substances, Administrator Carol Browner directed EPA in 1995 to explicitly and consistently take into account environmental health risks to infants and children in all risk assessments, risk characterizations and public health standards set for the United States. In April 1997, President Clinton signed Executive Order 13045 on the protection of children from environmental health risks, which assigned a high priority to addressing risks to children. In May 1997, EPA established the Office of Children's Health Protection to ensure the implementation of the President's Executive Order. Circumstances where risks to children should be considered in the context of the AWQC Methodology, along with specific recommendations, are discussed in relevant sections throughout this proposal.

Details on risk characterization and the guiding principles stated above are included in the March 21, 1995 policy statement and the discussion of risk characterization which accompanies the Proposed Guidelines for Carcinogen Risk Assessment 61 FR 17960 (April 23, 1996) and the Reproductive and Toxicity Risk Assessment Guidelines also of 1996 (61 FR 56274).

4. Science, Science Policy, and Risk Management

An important part of risk characterization, as described at the beginning of this Section, is to make risk assessments transparent. This means that conclusions drawn from the science are identified separately from policy judgments and risk management decisions, and that the use of default

values or methods, as well as the use of assumptions in risk assessments, are clearly articulated. For the purposes of this revised methodology, EPA will attempt to separate out scientific analysis from science policy and risk management decisions. This will ultimately allow the States and Tribes, and specifically users of this methodology, such as scientists, policy setters, and risk managers, to understand the elements of the methodology accurately and clearly, and to easily separate out the scientific decisions from the science policy and risk management decisions. This is important so that when questions are asked regarding the scientific merit, validity, or apparent stringency or leniency of AWQC, the implementer of the criteria can clearly explain what judgments were made to develop the criterion in question and to what degree these judgments were based on science, science policy, or risk management. To some extent this process will also be displayed in future AWQC documents.

When EPA speaks of science or scientific analysis, we are referring to the extraction of data from either toxicological or exposure studies and surveys with a minimum of judgment being used to make inferences from the available evidence. For example, if we are describing a point of departure from an animal study (*e.g.*, a lowest-observed-adverse-effect level, or LOAEL), this is usually determined as a lowest dose which produces an observable adverse effect. This would constitute a scientific determination. Judgments applying science policy, however, may enter this determination. For example, several scientists may differ in their opinion of what is adverse, and this in turn can influence the selection of a LOAEL in a given study. The use of an animal study to predict effects in a human in the absence of human data is an inherent science policy decision. The selection of specific uncertainty factors when developing a reference dose is another example of science policy. In any risk assessment, a number of decision points occur where risk to humans can only be inferred from the available evidence. Both scientific judgments and policy choices may be involved in selecting from among several possible inferential bridges when conducting a risk assessment.

Risk management is the process of weighing policy alternatives and selecting the most appropriate regulatory action, integrating the results of risk assessment with engineering data and with social, economic, and political concerns to reach a decision. In this methodology, the choice of a default fish consumption rate which is protective of 90 percent of the general population is a risk management decision. The choice of an acceptable cancer risk by a State or Tribe is a risk management decision.

Many of the parameters in the revised methodology are an amalgam of science, science policy, and/or risk management. For example, most of the defaults chosen by EPA are based on the examination of scientific data and the application of either science policy or risk management. This includes the default assumptions of 2 liters a day of drinking water; the assumption of 70 kilograms for an adult body weight; the use of default percent lipid and particulate organic carbon/dissolved organic carbon (POC/DOC) for developing national BAFs; the default fish consumption rates for the general population and sport and subsistence anglers; the choice of a default cancer risk level. Some decisions are more heavily steeped in science and science policy, such as the choice of default BAFs, and others are more obviously risk management decisions, such as the determination of default fish consumption rates and cancer risk levels. Throughout the revised methodology, EPA has identified just what kind of decision was necessary to develop defaults and what the basis for the decision was. More details on the concepts of science analysis, science policy, risk management and how they are introduced into risk assessments are included in Risk Assessment in the Federal Government: Managing the Process, National Academy Press. 1983.

5. Discussion of Uncertainty

(a) Observed Range of Toxicity Versus Range of Environmental Exposure. When characterizing a risk assessment, an important distinction to make is between the observed range of adverse effects (from an epidemiology or animal study) and the environmentally observed range of exposure (or anticipated human exposure) to the contaminant. In many cases, EPA intends to apply a number of default factors to account for uncertainties or incomplete knowledge in developing RfDs or nonlinear cancer risk assessments to provide a margin of protection. In reality, the actual effect level and the environmental exposure levels may be separated by several orders of magnitude. The difference between some observed response and the anticipated human exposure should be described by risk assessors and managers, especially when comparing criteria to environmental levels of a contaminant.

(b) Continuum of Preferred Data/Use of Defaults. In both toxicological and exposure assessments, EPA has defined a continuum of preferred data ranging from a highest preference of chronic human data for toxicological assessments (e.g., studies that examine a long-term exposure of humans to a chemical, usually from occupational and/or residential exposure); and actual field data for many of the exposure decisions that need to be made (*e.g.*, locally derived fish consumption rates, waterbody-specific bioaccumulation rates); to default values which are at the lower end of the preference continuum. EPA has supplied default values for all of the risk assessment parameters in the revised methodology; however, it is important to note that when default values are used, the uncertainty in the final risk assessment is usually higher, and the final resulting criterion may not be as applicable to local conditions, than is a risk assessment derived from human/field data. Using defaults assumes generalized conditions and may not capture the actual variability in the population (*e.g.*, sensitive subpopulations/high-end consumers). If defaults are chosen as the basis for criteria, these inherent uncertainties should be communicated to the risk manager and the public. While this continuum is an expression of preference on the part of EPA, it does not imply in any way that any of the choices are unacceptable or scientifically indefensible.

(c) Significant Figures. The number of significant figures in a numeric value is the number of certain digits plus one estimated digit. Digits should not be confused with decimal places. For example, 15.1, .0151, and .0150 all have 3 significant figures. Decimal places may have been used to maintain the correct number of significant figures, but in themselves they do not indicate significant figures (Brinker, 1984). Since the number of significant figures must include only one estimated digit, the sources of input parameters (*e.g.*, fish consumption and water consumption rates) should be checked to determine the number of significant figures associated with data they provide. However, the original measured values may not be available to determine the number of significant figures in the input parameters. In these situations, EPA recommends utilizing the data as presented.

When developing criteria, EPA recommends rounding the number of significant figures at the end of the criterion calculation to the same number of significant figures in the least precise parameter. This is a generally accepted

practice which can be found described in greater detail in APHA, 1992 and Brinker, 1984. The general rule is that for multiplication or division, the resulting value should not possess any more significant figures than is associated with the factor in the calculation with the least precision. When numbers are added or subtracted, the number that has the fewest decimal places, not necessarily the fewest significant figures, puts the limit on the number of places that justifiably may be carried in the sum or difference. Rounding off a number is the process of dropping one or more digits so that the value contains only those digits that are significant or necessary in subsequent computations (Brinker, 1984). The following rounding procedures are recommended: (1) if the digit 6, 7, 8, or 9 is dropped, increase the preceding digit by one unit; (2) if the digit 0, 1, 2, 3, or 4 is dropped, do not alter the preceding digit; and (3) if the digit 5 is dropped, round off the preceding digit to the nearest even number (*e.g.*, 2.25 becomes 2.2 and 2.35 becomes 2.4) (APHA, 1992 and Brinker, 1984).

EPA recommends that calculations of water quality criteria be performed without rounding of intermediate step values. The resulting criterion may be rounded to a manageable number of decimal places. However, in no case should the number of digits presented exceed the number of significant figures implied in the data and calculations performed on them. The term "intermediate step values" refers to values of the parameters in Equations ID–1 through ID–3. The final step is considered the resulting AWQC. Although AWQC are, in turn, used for purposes of establishing WQBELs in NPDES permits, calculating TMDLs, and with Superfund ARARs, they are considered the final step of this methodology and, for the purpose of this discussion, where the rounding should occur.

The determination of appropriate significant figures inevitably involves some judgment regarding the fact that some of the equation parameters are adopted default exposure values. Specifically, the default drinking water intake rate of 2 L/day is a value adopted to represent a majority of the population over the course of a lifetime. Although supported by drinking water consumption survey data, this value was adopted as a policy decision and, as such, does not have to be considered in determining the parameter with the least precision. That is, the resulting AWQC need not always be reduced to one significant digit. Similarly, the 70-kg adult body weight has been adopted Agency-wide and represents a default policy decision.

The following example illustrates the rule described above. The example is for hexachlorobutadiene (HCBD), the revised criterion summarized in Appendix VI. The parameters that were calculated (*i.e.*, not policy adopted values) include values with significant figures of two (the Pdp and RSC), three (the SF), and four (the FI and BAF). Based on the revised methodology, the final criterion should be rounded to two significant figures. The bold numbers in parentheses indicate the number of significant figures and those with asterisks also indicate Agency adopted policy values.

$$AWQC = \frac{Pdp}{SF} \cdot RSC \cdot \left(\frac{BW}{DI + (FI \cdot BAF)} \right) \qquad \text{(Equation ID-2)}$$

Example (refer to HCBD document for details on the data):

$$AWQC = \left(\frac{0.054(2)}{300(3)} - 1.2 \times 10^{-4}(2) \right) \times \left(\frac{70(2^{*})}{2(1^{*}) + (0.01780(4) \times 3{,}180(4))} \right)$$

$$AWQC = 7.2 \times 10^{-5}\ \text{mg/L}\ (0.072\ \mu\text{g/L},\ \text{rounded from}\ 7.167 \times 10^{-2}\ \mu\text{g/L})$$

* represents Agency adopted policy value.

A number of the values used in the equation may result in intermediate step values that have more than four figures past the decimal place and may be carried throughout the equation. However, carrying more than four figures past the decimal place (equivalent to the most precise parameter) is unnecessary as it has no effect on the resulting criterion calculation.

References

APHA. American Public Health Association. 1992. Standard Methods: For the Examination of Water and Wastewater. 18th Edition. Prepared and published jointly by: American Public Health Association, American Water Works Association, and Water Environment Federation. Washington, D.C.

Brinker, R.C. 1984. Elementary Surveying. 7th Edition. Cliff Robichaud and Robert Greiner, Eds. Harper and Row Publishers, Inc. New York, NY.

Appendix II. Implementation of AWQC Methodology Revisions

Today's Draft AWQC Methodology Revisions raise several important implementation issues. These include the following: (1) the relationship of the 304(a) criteria revisions to other EPA water quality standards activities; (2) the status of existing 304(a) criteria once any revisions to the criteria and the associated methodologies are finalized; (3) the role of States and Tribes in developing the criteria; (4) the appropriateness of EPA revising 304(a) criteria on the basis of a change in one, or fewer than all, parameters; (5) the process EPA will utilize in developing new criteria for additional chemicals and revising existing criteria; and (6) the development of a priority setting process for selecting appropriate 304(a) criteria for revising. Each of these areas is discussed below.

A. Relationship to Other EPA Activities

New information leads to new insights as to how a chemical induces a toxic effect. In response to such new information, EPA continually updates

RfDs and dose-response information in IRIS. Toxicity information and exposure assumptions change as additional data become available. This ongoing evolution effects two important and interrelated responsibilities of the Agency, which are carried out concurrently. First, from time to time EPA recalculates the 304(a) water quality criteria to reflect the latest data. These recalculations have been compiled in a series of guidance documents: the Green Book in 1968, the Blue Book in 1972, the Red Book in 1976, and the Gold Book in 1986. The second responsibility pertains to the requirements of Section 303(c).

As part of the water quality standards triennial review process defined in Section 303(c)(1), the States and Tribes are responsible for maintaining and revising water quality standards. Section 303(c)(1) requires States and Tribes to review, and modify if appropriate, their water quality standards at least once every three years. When a State or Tribe fails to revise or adopt water quality standards consistent with the requirements of the CWA, Section 303(c)(4) authorizes EPA to promulgate replacement water quality standards for them. From time to time, EPA has undertaken such promulgations and calculated numeric water quality criteria for the purposes of the Act. In doing so, EPA utilizes the most current available scientific information, such as toxicity data and exposure assumptions.

With the promulgation of Federal criteria under 303(c)(4) and the publication of new or revised 304(a) criteria, the criteria in an early Federal action may differ from the criteria in a subsequent Federal action. Some confusion has arisen among the public with regard to what EPA's current recommended 304(a) water quality criteria are for a given chemical at any given time.

The most recent Federal action establishes the Agency's current water quality criteria. To date, the most recent Federal recalculation of 304(a) criteria occurred in the CTR, not withstanding the fact the CTR was proposed pursuant to Section 303(c)(4) of the Act. (See discussion below.) Again, EPA views the criteria program as constantly evolving. When the AWQC Methodology Revisions are final, any chemical-specific 304(a) criteria published using the revised methodology will be considered the Agency's most current 304(a) criteria. EPA notes revisions of existing 304(a) criteria prior to the finalization of the revised methodology may be undertaken and are not precluded.

As discussed in Appendix I, Section B.3., States and Tribes have three options when adopting water quality criteria for which EPA has published 304(a) criteria. They can establish numerical values based on 304(a) criteria, 304(a) criteria modified to reflect site specific conditions, or other scientifically defensible methods. When States or Tribes revise their water quality criteria to correct deficiencies identified in a Federal promulgation, EPA will assess the scientific defensibility of the criteria in terms of the Agency's most recent recommended water quality criteria. Thus, there may be cases where applicable policies and science have evolved such that EPA would be evaluating the scientific defensibility of State or Tribal criteria, adopted using one of the three options discussed above, on the basis of new information. Furthermore, EPA views Federal 303(c)(4) promulgations as temporary corrections of deficiencies in State and Tribal water quality standards. The triennial review process provides States and Tribes with a process for addressing these deficiencies. Since CWA Section 303(c)(1) requires States and Tribes to review and modify their water quality standards at least once every three years, EPA does not expect or intend to assume the State and Tribal responsibility of periodically reviewing and revising water quality standards, including water quality criteria, through federal promulgations.

EPA developed and published final Water Quality Guidance for the Great Lakes System (the Guidance), codified at 40 CFR part 132, in March 1995 (58 FR 15366). The Guidance consists of water quality criteria for 29 pollutants to protect aquatic life, wildlife, and human health, and detailed methodologies to develop criteria for additional pollutants, implementation procedures, and antidegradation policies and procedures tailored to the Great Lakes system. The Guidance was developed using the best available science, and reflects the unique nature of the Great Lakes ecosystem. Great Lakes States and Tribes are to use the water quality criteria, methodologies, policies and procedures in the Guidance to establish consistent, enforceable, long-term protection for the waters of the Great Lakes system. Under the CWA, the Great Lakes States are to adopt provisions into their water quality standards and National Pollutant Discharge Elimination System (NPDES) permit programs by March 1997 that are consistent with the Guidance. The Guidance promotes consistency in standards and implementation procedures while allowing appropriate flexibility to States and Tribes to develop equitable strategies to control pollution sources and to promote pollution prevention practices. Today's Draft AWQC Methodology Revisions are being undertaken pursuant to Section 304 of the CWA, is independent of, and does not supersede, the Guidance.

Although consistency in State water quality standards programs is an important goal for EPA, EPA also recognizes it is necessary to provide appropriate flexibility to States and Tribes, both Great Lakes States and non-Great Lakes States, in the development and implementation of place-based water quality programs. In overseeing States' implementation of the CWA, EPA has found that reasonable flexibility is not only necessary to accommodate site-specific conditions and unforseen circumstances, but also to enable innovations and improvements as new approaches and information become available. Recognition of a general need for flexibility is not incompatible with the requirements for the Great Lakes States and Tribes established at Section 118(c)(2). Once States and Tribes have adopted provisions consistent with the Guidance, EPA intends to extend to them flexibility in utilizing new data and information in developing and updating water quality criteria using the Great Lakes Water Quality Guidance methodologies. In the event a Great Lakes State or Tribe fails to adopt provisions consistent with the Guidance, EPA will promulgate provisions consistent with 40 CFR part 132 that will apply to waters and discharges within that jurisdiction.

In the Draft AWQC Methodology Revisions, EPA is presenting the acceptable lifetime cancer risk for the general population in the range of 10^{-5} to 10^{-6} as opposed to the previous range of 10^{-5} to 10^{-7}. The Draft AWQC Methodology also provides that States and Tribes should ensure the most highly exposed populations do not exceed a 10^{-4} risk level. EPA emphasizes selection of a risk level is a component used in the derivation of water quality criteria, and is thus subject to EPA review under Section 303(c) of the CWA. These proposed revisions are consistent with current program office guidance and Agency regulatory actions.

The three criteria summary documents in Appendices IV through VI were derived using a 10^{-6} risk level, which the Agency believes reflects an appropriate risk for the general population. This risk level is already used by many States and Tribes. EPA

intends to continue to derive 304(a) criteria at the 10^{-6} risk level, applying a risk management policy which ensures protection for all exposed population groups. EPA acknowledges that at any given risk level for the general population, those segments of the population that are more highly exposed face a higher relative risk. For example, if fish are contaminated at a level permitted by criteria derived on the basis of a risk level of 10^{-6}, individuals consuming up to 10 times the assumed fish consumption rate would still be protected at a 10^{-5} risk level. States and Tribes have the flexibility to adopt water quality criteria that result in a higher risk level (*e.g.*, 10^{-5}). EPA expects to approve such criteria if the State or Tribe has identified the most highly exposed subpopulation within the State or Tribe, demonstrates the chosen risk level is adequately protective of the most highly exposed subpopulation and has completed all necessary public participation. EPA notes that concerns regarding highly exposed subpopulations make it unlikely EPA would approve a State-wide 10^{-4} risk level, unless it was demonstrated that the potentially highly exposed subpopulations are, in fact, not experiencing higher exposures than the general population. In effect, risk for such subpopulations would not exceed a 10^{-4} risk level. EPA further notes that risk levels and criteria need to be protective of tribal rights under federal law (*e.g.*, fishing, hunting, or gathering rights) that are related to water quality. Such rights may raise unique issues and will need to be evaluated on a case-by-case basis.

B. Status of Existing 304(a) Criteria for Priority Pollutants and Methodology

In November 1980, EPA published criteria development guidelines for the protection of human health, along with criteria for 64 toxic pollutants and pollutant classes (45 FR 79318). The total number of human health criteria published in 1980 was 105. Subsequently, three volatile chemicals (dichlorodifluoromethane, trichlorofluoromethane, and bis-(chloromethyl)-ether) were removed from the priority list. In 1984, the criteria for dioxin were published; this resulted in a total of 103 criteria. In 1986, EPA summarized the available criteria information in Quality Criteria for Water 1986 (1986 "Gold Book"). The 103 human health criteria for the protection of human health were included in the proposed NTR in November 1991 (56 FR 58420). At that time, 83 of the 103 criteria were revised to reflect the contemporary IRIS values. The final NTR (codified at 40 CFR 131.36(b)(1)) included 91 human health 304(a) criteria. Nine previously published criteria were not included in the NTR for the purposes of promulgating federal water quality under 303(c), but remain in effect as published 304(a) criteria. Previously published criteria for seven pollutants were withdrawn in the NTR. The NTR directed permit authorities to specifically address five other pollutants in NPDES permit actions using the States' existing narrative "free from toxicity" criteria. In August, 1997, EPA included revised human health criteria for 22 pollutants in the CTR (62 FR 42160). These 22 criteria, plus the previously published 78 criteria, are the Agency's recommended human health criteria. As such, they will continue to be used as the basis for Agency decisions, both regulatory and nonregulatory, until EPA revises and reissues chemical-specific criteria. For example, EPA intends to use these criteria: (1) as guidance to States and Tribes for use in establishing water quality standards; (2) as the basis for EPA promulgation of water quality standards; (3) in establishing NPDES water quality-based permit limits, where the criteria have been adopted by a State or Tribe or promulgated by EPA; and (4) for all other purposes of Section 304(a) criteria under the Act. It is important to emphasize again two distinct purposes which are served by the 304(a)criteria. The first is as guidance to the States and Tribes in the development and adoption of water quality criteria which will protect designated uses, and the second is as the basis for promulgation of a superseding Federal rule when such action is necessary.

As stated above, until such time as EPA re-evaluates a chemical, subjects the criteria to appropriate peer review, and subsequently publishes a revised chemical-specific 304(a) criteria, the existing 304(a) criteria remain in effect. While the Draft AWQC Methodology Revisions represent improvements to the 1980 methodology, EPA believes the 1980 human health 304(a) criteria methodology and the resulting criteria are fundamentally sound from a scientific standpoint. In the Draft AWQC Methodology Revisions, EPA is presenting for public review and comment the latest advancements in risk and exposure assessment and the application of the most recent data available. In this manner, the Agency will continue to strengthen the scientific and technical foundations of the Agency's human health 304(a) criteria and provide an incremental improvement in the level of protection afforded to the public.

EPA has long supported this position. For example, while undertaking reassessments of dioxin, PCBs, and other chemicals, EPA has consistently upheld the use of the current 304(a) criteria for these chemicals and has maintained their scientific acceptability on the grounds that until such time as a reassessment is completed, the existing 304(a) criteria represent EPA's best assessment for that particular chemical.

C. State and Tribal Criteria Development

In keeping with their primary responsibility in establishing water quality standards, EPA encourages States and Tribes to develop and adopt water quality criteria which reflect local and regional conditions by using the options discussed above. States and Tribes will have access to EPA regional, laboratory, and headquarters staff when help is needed for interpretation of the methodology revisions, and for making critical risk assessment decisions. However, when establishing a numerical value based on 304(a) criteria modified to reflect site specific conditions, or on other scientifically defensible methods, EPA strongly cautions States and Tribes not to selectively apply data in order to ensure a water quality criteria which is less stringent than EPA's 304(a) criteria. Such an approach would inaccurately characterize risk in particular.

Once revisions to the human health methodology are finalized, EPA intends to continue to update a limited number of 304(a) criteria per year, developing the toxicological and exposure data needed to conduct risk assessments associated with many of the toxic pollutants covered by the current universe of 304(a) criteria. As discussed below in Section D, updating the exposure factors used in deriving a criterion is not as time- and resource-intensive as completing the toxicological evaluation. EPA intends to update a limited number of 304(a) criteria each year over the next several years using new national default exposure assumptions, national default BAFs, and updated toxicological values (*i.e.*, new or revised RfDs, cancer dose-response assessments). In establishing water quality criteria, States and Tribes are urged to continue to use the IRIS noncancer and cancer risk assessments, but to adjust the exposure assumptions (*e.g* , fish consumption and relative source contribution) to account for local and regional conditions. If a State- or

waterbody-specific exposure analysis cannot be conducted, States and Tribes should rely on EPA national defaults.

Generally, EPA has sought to conduct re-evaluations of all of the components of each of the 304(a) criteria before revising the criteria. However in recent years, in recognition of both time and resource limitations, EPA has revised existing 304(a) criteria on the basis of a limited number of components for which there are new data or improved science is a reasonable and efficient means to: (1) implement the latest advances in scientific information and Agency policy for exposure analysis; and (2) publish revised 304(a) criteria on a more frequent basis. This approach promotes up-to-date and robust 304(a) criteria.

Once new or revised 304(a) criteria are published by EPA, the Agency expects States and Tribes to adopt new or revised water quality criteria into their water quality standards consistent with the three options discussed above. EPA believes State and Tribal adoption of up-to-date water quality criteria for all pollutants for which EPA has published 304(a) criteria is important for ensuring full and complete protection of human health. EPA emphasizes it will be reviewing State and Tribal water quality standards to assess the need for new or revised water quality criteria. EPA believes five years from the date of publication of new or revised 304(a) criteria is a reasonable time frame by which States and Tribes should take action. This period is intended to accommodate those States and Tribes which have begun a triennial review and wish to complete the actions they have underway, deferring initiating adoption of new or revised water quality criteria until the next triennial review.

D. Process for Developing New or Revised 304(a) Criteria

Section 304(a)(1) directs the Agency to "develop and publish * * * and from time to time * * * revise criteria for water quality accurately reflecting the latest scientific knowledge." Recent changes in Agency policies and procedures, as well as potential future changes, have implications for 304(a) criteria. These include IRIS updates, the proposed revisions to the cancer risk assessment guidelines, and revisions to the human health criteria methodology such as those in today's document. Additionally, when supported by additional scientific information, EPA has approved site-specific and chemical-specific decisions which differ from the 304(a) criteria published in the Gold Book. This situation, as well as the need for Federal promulgations of water quality standards under Section 303(c)(4) discussed above, has led to confusion among States, Tribes, and the public as to the process for developing 304(a) criteria.

Several steps need to occur before a new 304(a) criterion for a chemical is developed or an existing 304(a) criterion is revised. First, new data must be evaluated by appropriate EPA Offices, calculations of a new criterion or any revisions to existing criteria must be completed, and any implications to other EPA programs must be determined. EPA estimates the time to conduct risk assessment ranges from a few months to a year or more. For exposure analyses, EPA estimates the time to be much shorter, ranging from a few weeks to a few months. EPA's experience is that toxicological evaluations take longer to complete than exposure assessments due the degree and complexity of the analysis. EPA will utilize new, relevant data in calculating a revised criterion value without regard to whether the revised criterion is more or less stringent. As noted above, EPA may revise 304(a) criteria on the basis of one or more components (*e.g.*, BAF, fish intake, toxicity assessment), rather than a full set of components. This approach is in keeping with the Agency's ongoing efforts to strengthen the scientific and technical foundations of the 304(a) criteria.

Second, EPA policy is to subject derivations of new criteria or revisions of existing criteria to appropriate peer review. Agency peer review consists of a documented critical review by qualified individuals or organizations who are independent of those who originally performed the work, but who are collectively equivalent in technical expertise to them. Conducting peer review will help ensure the criteria are technically adequate, appropriately derived, properly documented and satisfy quality requirements. In addition, EPA will accept data and information from interested members of the public during the peer review process. Through peer review of 304(a) criteria, EPA will provide a sound basis for its decisions, enhancing both the credibility and acceptance of the 304(a) criteria.

Finally, EPA publishes criteria and announces their availability in the **Federal Register**. While the process for developing a new 304(a) criterion is basically the same as for revising an existing criterion, the time and resources for developing the necessary data bases for new criteria are significantly greater. However, the criteria development process described above is essentially the same whether undertaken pursuant to 304(a) or 303(c)(4).

In an effort to keep the States, Tribes, and public apprised of the most current Agency information, EPA intends to publish on a regular basis the current recommended 304(a) criteria, and the individual component values used in their derivation, for guidance to States and Tribes in adopting water quality standards under Section 303. Traditionally, EPA has published criteria documents or summaries of these documents (*e.g.*, the Gold Book) as the process for incorporating the latest scientific knowledge and updating 304(a) criteria. Under this new approach, EPA expects to publish annually in the **Federal Register** a table, similar to the one EPA publishes for the drinking water MCLs and Health Advisories, entitled Drinking Water Regulations and Health Advisories (EPA 822–B–96–002). The drinking water matrix includes information on the existing MCLs, MCLGs, health advisories including the RfD, and the cancer assessment for the chemical. The AWQC table will contain all current recommended human health and aquatic life 304(a) criteria values. This table will only include water quality criteria of general national applicability. Water quality criteria derived to address a site specific or watershed situation will not be included. Water quality criteria from proposed or promulgated Federal water quality standards or new or revised 304(a) criteria documents will be regularly incorporated into the table. Additionally, for easier public access, EPA intends to maintain this repository of current EPA 304(a) criteria and supporting information on the Internet on EPA's home pages on the World Wide Web (www.epa.gov).

E. Development of Future Criteria Documents

The Agency intends to implement a streamlined approach to developing criteria documents which focuses on critical toxicological and exposure related studies. This is a departure from the past format in which all existing toxicological and exposure studies were presented in the 1980 criteria documents, with equal emphasis placed on exposure, pharmacokinetics, toxicological effects, and criterion formulation. Due to limited resources and a need to revise and update criteria more frequently, future criteria documents will be more abbreviated, with an emphasis on using current risk assessments (on IRIS or other EPA health assessment documents) where available and focusing to a greater

extent on critical exposure and toxicological studies which may influence the development of a 304(a) criterion (*e.g.*, critical effects studies which form the basis of RfD development or cancer assessment). EPA will still review the literature for the latest studies, but does not intend to provide an exhaustive amount of information for those areas which are deemed less significant in the criterion development process. Where there is a significant amount of literature on an area of study (for instance, pharmacokinetics), EPA expects to reference the information or cite existing IRIS support documents which discuss the information in greater detail.

The overall objective of this change in approach is to allow EPA to revise and update 304(a) criteria more frequently, while still maintaining the scientific rigor which EPA requires. With this new format, EPA estimates it can revise several criteria for the same cost as revising a single criterion under the old format.

In Appendices IV through VI of today's document, EPA is publishing summaries of revised criteria for three chemicals using the Draft AWQC Methodology Revisions; the full criteria documents are available on EPA's Internet web site at: http://www.epa.gov/OST/Rules. The three chemicals for which criteria have been developed are: acrylonitrile, 1,3-dichloropropene, and hexachlorobutadiene.

1. Acrylonitrile

The revised criterion for protection of human health from the consumption of drinking water and organisms is 0.055 µg/L. The criterion for the protection of human health from the consumption of organisms and incidental ingestion of water is 4.0 µg/L. These values are based on an assumed risk level of 1×10^{-6}. For more details on assumed parameters in this calculation, see the summary in Appendix IV of this document. The complete criteria document is available through NTIS or on EPA's Internet web site.

2. 1,3–Dichloropropene

The revised criterion for protection of human health from the consumption of drinking water and organisms is 0.34 µg/L. The criterion for the protection of human health from the consumption of organisms and incidental ingestion of water is 14 µg/L. These values are based on an assumed risk level of 1×10^{-6}. For more details on assumed parameters in this calculation, see the summary in Appendix V of this document. The complete criteria document is available through NTIS or EPA's Internet web site.

3. Hexachlorobutadiene

The revised criteria were derived using a nonlinear (MOE) approach. However, both linear and nonlinear approaches are demonstrated for this chemical. Using the linear approach, the criterion for protection of human health from the consumption of drinking water and organisms is 0.046 µg/L (assumed risk level of 1×10^{-6}); and the criterion for the protection of human health from the consumption of organisms and incidental ingestion of water is 0.049 µg/L. Using the nonlinear approach, the criterion for protection of human health from the consumption of drinking water and organisms is 0.11 µg/L; and the criterion for the protection of human health from the consumption of organisms and incidental ingestion of water is 0.12µg/L. Again, EPA recommends the nonlinear approach based on the fact that in this specific case, there is too much uncertainty and not enough confidence using the tumor data (only one data point at a very high dose where the MTD has been exceeded and toxicity is severe) to do a linear high to low dose extrapolation for the estimation of human risk. Moreover, since data from both rats and mice support the same NOAEL value, there is greater confidence in the data base for a nonlinear approach. For more details on assumed parameters in this calculation, see the summary in Appendix VI of this document. The complete criteria document is available through NTIS or on EPA's Internet web site.

F. Prioritization Scheme for Selecting Chemicals for Updating

As discussed above, the Agency does not have the resources to immediately develop human health criteria, either new or revised, for all the contaminants found in surface water. Because of this, EPA is soliciting comment on how to prioritize chemicals for future recommended 304(a) criteria using the revised human health methodology. One approach for prioritizing chemicals is for EPA to publish on an annual basis in the **Federal Register** a list of substances for which EPA plans to initiate criterion development or updating. The **Federal Register** document would provide the status of any ongoing criteria updates or developments of new criteria. EPA would also ask the public for candidates for new or updated recommended AWQC and would ask for scientific data (either toxicological or exposure related) or a compelling reason(s) to revise a current criterion or develop a new AWQC. This process would be similar to that used by EPA to announce its lists of agents for which cancer hazard and dose-response assessments will be initiated on an annual basis (61 FR 32799). Using the information submitted from the public and other data, the Agency would establish a list of chemicals for which it will initiate work, on an annual basis. EPA intends to maintain an open docket on the Internet which would allow the public and/or interested parties to review external submissions to the Agency for given chemicals and would also allow an exchange of pertinent information between the public and the Agency.

To initiate this process for prioritization, EPA evaluated chemicals to generate a preliminary list of candidates for revision. Focusing on chemicals that pose the greatest potential risk to human health, the initial universe considered by EPA included the 126 priority pollutants designated as toxic under Section 307(a) of the Act, plus seven additional pollutants included because of their bioaccumulation potential. (EPA was required to publish criteria documents for 65 pollutants and pollutant classes which Congress, in the 1977 amendments to the Clean Water Act, designated as toxic under Section 307(a)(1). The 65 pollutants and pollutant classes were, in total, 129 chemicals which became known as the list of 129 priority pollutants. The final number became 126 when 3 priority pollutants were subsequently deleted.) After careful consideration, EPA identified 98 chemicals as possible candidates for new or revised 304(a) criteria. The 98 chemicals were selected based on the following factors:

- The NTR promulgated 304(a) human health criteria for 91 chemicals. EPA considers these 91 chemicals as a good representation of the priority pollutants for which sufficient data exist to revise 304(a) criteria. (The NTR did not include human health criteria for 35 priority pollutants for the reasons discussed in the final NTR.)
- Seven chemicals for which human health criteria were not developed in the NTR but which have a high potential for bioaccumulation, based on information contained in the recently promulgated Great Lakes Water Quality Guidance (hexachlorocyclohexane, mirex, octachlorostyrene, pentachlorobenzene, photomirex, 1,2,3,4-tetrachlorobenzene, 1,2,3,5-tetrachlorobenzene).

In prioritizing the 98 chemicals discussed above, EPA considered four factors: (1) toxicity data from IRIS; (2)

data on occurrence in fish tissue from The Incidence and Severity of Sediment Contamination in Surface Waters of the United States (EPA–823–R–97–006); (3) data on the occurrence in sediments from The Incidence and Severity of Sediment Contamination in Surface Waters of the United States; and (4) data on BAFs for trophic level 4 from either the proposed or final Great Lakes Water Quality Initiative Guidance (GLWQI or GLI). Of these four factors, EPA selected the potential for bioaccumulation (*i.e.*, BAFs and Log K_{ow}) along with toxicity (*i.e.*, cancer slope factor or RfD) as the most indicative of potential risk to human health. Taking these two factors into consideration, EPA chose 29 chemicals from the list of 98 originally considered. This list provides the initial basis for criteria revision decisions, along with other Agency chemical ranking lists and input from States and Tribes. Furthermore, EPA intends to use these two factors for ranking contaminants in the future. EPA would review these priorities in light of Agency resources and programmatic commitments when making decisions to develop and/or revise 304(a) criteria in the future. New criterion updates and starts would be presented in an annual **Federal Register** document, as described in Section D. PCBs, mercury, and dioxin are not on the priority list because EPA is already committed to developing updated AWQC for these chemicals. The 29 highest ranked chemicals out of the 98 considered (not in order of priority) are the following:

Benz(a)-Anthracene
Benzo(a)-Pyrene
4-Bromo-phenyl Phenyl-Ether
4-Chloro-phenyl Phenyl Ether
Dibenzo(a,h)Anthracene
Di-n-Butyl Phthalate
Hexachloro-benzene
Hexachloro-butadiene
Aldrin
Hexachlorocyclohexane
alpha-BHC
beta-BHC
gamma-BHC
delta-BHC
Chlordane
4,4′-DDT
4,4′-DDE
4,4′-DDD
Dieldrin
Endrin
Heptachlor
Heptachlor Epoxide
Mirex/dechlorane
Octachlorostyrene
Pentachlorobenzene
Photomirex
1,2,3,4-Tetrachlorobenzene
1,2,3,5-Tetrachlorobenzene
Toxaphene

EPA is also planning to review other prioritization efforts within the Agency to consider possible non-bioaccumulative contaminants found in surface water. Specifically, EPA will evaluate the Safe Drinking Water Contaminant List and risk analyses from the Office of Pesticide Programs.

G. Request for Comments

EPA requests comment on all aspects of the implementation strategy and specifically requests comment on the following areas.

1. Because, as a general matter, EPA uses the cancer risk range of 10^{-4} to 10^{-6} when setting criteria and standards, the Agency recommends a consistent approach here (*i.e.*, 10^{-5} to 10^{-6} for the general population, while ensuring that the most highly exposed population does not exceed a risk level of 10^{-4}). EPA requests comment on this recommendation and its intention to derive 304(a) criteria at the 10^{-6} level. Are there other issues that the Agency should consider regarding this policy?

2. Should EPA revise existing 304(a) criteria on the basis of a partially updated data set (*e.g.*, update exposure factors to be used in calculating 304(a) criteria)?

3. With what frequency should new criteria be developed or existing criteria updated? Is annually sufficient?

4. Does the streamlined approach to developing criteria documents appropriately characterize the derivation of criteria using the proposed methodology? Readers are directed to the three criteria documents available through NTIS and EPA's Internet site as examples of this new approach.

5. Is the list of 29 chemicals which EPA selected for prioritization appropriate? What other chemicals should be added to the list, and why should they be added to the list?

Appendix III. Elements of Methodology Revisions and Issues by Technical Area

A. Cancer Effects

1. Background on EPA Cancer Assessment Guidelines

(a) 1980 AWQC National Guidelines. When EPA published the 1980 AWQC National Guideline (USEPA, 1980), formal Agency guidelines for assessing carcinogenic risk from exposure to chemicals had not yet been adopted. The methodology for assessing carcinogenic risk used by EPA in the 1980 AWQC National Guidelines is based primarily on the Interim Procedures and Guidelines for Health Risks and Economic Impact Assessment of Suspected Carcinogens published by EPA in 1976 (USEPA, 1976). Although the 1980 AWQC National Guidelines recommended the use of both human epidemiological and animal studies to identify carcinogens, potential human carcinogens were primarily identified as those substances causing a statistically significant carcinogenic response in animals. It was also assumed for risk assessment purposes that any dose of the carcinogen results in some possibility of a tumor (*i.e.*, a nonthreshold phenomenon).

Under the 1980 guidelines, two types of data are used for quantitative estimates: (1) lifetime animal studies; and (2) human studies where excess cancer risk is associated with exposure to the agent. (Human data with sufficient quantification to carry out risk assessment are generally not available for most agents because there is a lack of exposure data, especially for confounders.) The scaling of doses from animals to humans uses a conversion factor of body weight to the ⅔ power ($BW^{2/3}$) to approximate the expression of dose in terms of surface area of the target organ (represented as a perfect sphere), with exposure defined in mg of contaminant/(body weight)$^{2/3}$/day [43]. This approach is based on the assumption that equivalent doses between animal species can be expressed in terms of mg/surface area/day (Mantel and Schneiderman, 1975). This assumption is more appropriate at low applied-dose concentrations where sources of nonlinearity, such as saturation or induction of enzyme activity, are less likely to occur.

The estimation of cancer risk to humans typically used animal bioassay data extrapolated to low doses approximating human exposure using the LMS. The LMS model was fit to tumor data using a computer program (e.g., GLOBAL 86) that calculated the 95th percentile upper confidence limit on the linear slope in the low-dose range. The slope that is obtained is referred to as the q_1^*, and was used as an estimate of cancer potency. When animal data are used for these calculations, the body weights are scaled using $BW^{2/3}$, as discussed above. The q_1^* values obtained using the LMS model and slope factors derived from other models were expressed in the form of x $(mg/kg\text{-}day)^{-1}$ and are often used to estimate the upper bound of the

[43] The specific equation for converting an animal dose to a human equivalent dose using the $BW^{2/3}$ scaling factor is:

Human Equivalent Dose (mg/kg-day) = Animal Dose (mg/kg-day) × Animal BW + Animal $BW^{2/3}$ × Human $BW^{2/3}$ + Human BW

that is equivalent to

Animal Dose Animal BW + Human $BW^{1/3}$

lifetime cancer risk for long-term low-level exposure to agents.

Upper-bound risk assessments carried out with the low-dose linear model were generally considered conservative, representing the most plausible 95th percentile upper bound for risk. The "true risk" was considered unlikely to exceed the risk estimate derived by this procedure, and could be as low as zero at low doses. The use of low-dose linear extrapolation with a default to LMS was endorsed by four agencies in the Interagency Regulatory Liaison Group and was characterized as less likely to underestimate risk at the low doses typical of environmental exposure than other models and approaches that were available. Because of the uncertainties associated with extrapolation from high to low dose and from animals to humans, assumed water and fish exposure, and the serious public health consequences that could result if risk were underestimated, EPA believed that it was prudent to use the LMS to estimate cancer risk for the AWQC. In deriving water quality criteria, the slope factors are currently estimated using the LMS model under most circumstances.

Basic assumptions that are used to calculate the AWQC include a daily consumption rate of 2 liters of water per day (from all sources), a daily fish consumption rate of 6.5 grams per day, and a body weight of 70 kilograms (kg) (154 pounds). The maximum lifetime cancer risk generated by waterborne exposure to the agent is targeted in the range of one in one hundred thousand to one in ten million (10^{-5} to 10^{-7}). The formula for deriving the AWQC in mg/L for carcinogens presented in the 1980 AWQC National Guidelines is:

where:

10^{-6}=target cancer risk level; the 1980 AWQC National Guidelines recommended risk levels in the range of 10^{-5} to 10^{-7}

$$\text{AWQC (mg/L)} = \frac{(10^{-6})(70)}{(q_1^*)(2+0.0065R)} \qquad \text{(Equation IIIA-1)}$$

70=assumed body weight of an adult human being (kg)

q_1^*=carcinogenic potency factor for humans derived from LMS model $(mg/kg\text{-}day)^{-1}$

2=assumed daily water consumption of an adult human (L/day)

0.0065=assumed daily consumption of fish (kg)

R=bioconcentration factor (L/kg) from water to food (*e.g.*, fish, birds)

(b) 1986 EPA Guidelines for Carcinogenic Risk Assessment. Since 1980, EPA risk assessment practices have evolved significantly. In September 1986, EPA published its Guidelines for Carcinogen Risk Assessment (referred to subsequently in this document as the 1986 Cancer Guidelines) in the **Federal Register** (51 FR 33992) (USEPA, 1986). The 1986 Cancer Guidelines were based on the publication by the Office of Science and Technology Policy (OSTP, 1985) that provided a summary of the state of knowledge in the field of carcinogenesis and a statement of broad scientific principles of carcinogen risk assessment on behalf of the Federal government. The 1986 Cancer Guidelines categorize chemicals into alpha-numerical groups: A (known human carcinogen; sufficient evidence from epidemiological studies or other human studies); B (probable human carcinogen; sufficient evidence in animals and limited or inadequate evidence in humans); C (possible human carcinogen; limited evidence of carcinogenicity in animals in the absence of human data); D (not classifiable; inadequate or no animal evidence of carcinogenicity); and E (no evidence of carcinogenicity in at least two adequate species or in both epidemiological and animal studies). Within Group B there are two subgroups, Groups B1 and B2. Group B1 is reserved for agents for which there is limited evidence of carcinogenicity from epidemiological studies. It is reasonable, for practical purposes, to regard an agent for which there is "sufficient" evidence of carcinogenicity in animals as if it presented a carcinogenic risk to humans. Therefore, agents for which there is "sufficient evidence" from animal studies and for which there is "inadequate evidence" or "no data" from epidemiological studies would usually be categorized under Group B2 (USEPA, 1986). The system was similar to that used by the International Agency for Research on Cancer (IARC).

The 1986 Cancer Guidelines include guidance on what constitutes sufficient, limited, or inadequate evidence. In epidemiological studies, sufficient evidence indicates a causal relationship between the agent and human cancer; limited evidence indicates that a causal relationship is credible, but that alternative explanations, such as chance, bias, or confounding, could not adequately be excluded; inadequate evidence indicates either lack of pertinent data, or a causal interpretation is not credible. In animal studies, sufficient evidence includes an increased incidence of malignant tumors or combined malignant and benign tumors:

(a) In multiple species or strains;

(b) In multiple experiments (*e.g.*, with different routes of administration or using different dose levels);

(c) To an unusual degree in a single experiment with regard to high incidence, unusual site or type of tumor, or early age at onset;

(d) Additional data on dose-response; short-term tests or structural activity relationship.

Limited evidence includes studies involving a single species, strain, or experiment which do not meet criteria for sufficient evidence; experiments restricted by inadequate dosage levels, inadequate duration of exposure, inadequate period of follow-up, poor survival, too few animals, or inadequate reporting; an increase in benign but not malignant tumors with an agent showing no response in a variety of short-term tests for mutagenicity; or responses of marginal statistical significance in a tissue known to have a high or variable background rate.

In the 1986 Cancer Guidelines, hazard identification and the weight-of-evidence process focus on tumor findings. The human carcinogenic potential of agents is characterized by a six-category alphanumeric classification system. The weight-of-evidence approach for making judgment about cancer hazard analyzes human and animal tumor data separately, then combines them to make the overall conclusion about potential human carcinogenicity. The next step of the hazard analysis is an evaluation of supporting evidence (*e.g.*, mutagenicity, cell transformation) to determine whether the overall weight-of-evidence conclusion should be modified.

For cancer risk quantification, the 1986 Cancer Guidelines recommend the use of LMS as the only default approach. The 1986 Cancer Guidelines also mention that a low-dose extrapolation model other than the LMS might be considered more appropriate based on biological grounds. However, no guidance was given in choosing

other approaches. The 1986 Cancer Guidelines continued to recommend the use of $(BW)^{2/3}$ as a dose scaling factor between species.

(c) Scientific Issues Associated with the Current Cancer Risk Assessment Methodology for the Development of AWQC. In reviewing the current approach for the development of Water Quality Criteria for Human Health, EPA feels that the alphanumeric classification scheme for carcinogens adopted in 1986 was too rigid and relied too heavily on tumor findings and the full use of all relevant information, an understanding of how the agent induces tumors, and the relevance of the mode of action to humans was not promoted. Because guidance was not provided in the 1986 Cancer Guidelines for developing a mode of action understanding about how the agent induces tumors, dose-response assessments have been traditionally based on the modeling of tumor data with the LMS approach. There is an increasing number of examples of where the use of linear extrapolation may not be appropriate (*e.g.*, nonmutagenic carcinogens causing a hormonal imbalance and thyroid gland neoplasia, or inducing bladder tumors secondary to bladder calculi-induced hyperplasia). Additionally, the circumstances or conditions under which a particular hazard is expressed (*e.g.*, route, duration, pattern, or magnitude of exposure) are not conveyed with the 1986 letter classification system.

The Office of Water has also reviewed the guidance provided by the 1992 National Workshop on Revision of the Methods for Deriving National Ambient Water Quality Criteria for the Protection of Human Health (USEPA, 1993) and EPA's SAB review of the 1992 National Workshop report on cancer-related issues.[5] As recommended by these two groups, the Office of Water is revising the cancer risk assessment methodology for the development of AWQC by incorporating principles consistent with the Proposed Guidelines for Carcinogenic Risk Assessment dated April 23, 1996 (USEPA, 1996).

[5] The 1992 National Workshop on Revision of the Methods for Deriving National Ambient Water Quality Criteria for the Protection of Human Health (USEPA, 1993) and EPA's Scientific Advisory Board (SAB) review of the workshop identified several issues on cancer. EPA was encouraged by both groups to incorporate new approaches into the AWQC methodology. Further, the SAB recommended against the interim adoption of the 1986 Cancer Guidelines into the AWQC methodology, indicating that it might create considerable confusion in the future, once new Cancer Guidelines are formally proposed and implemented.

2. Proposed Revisions to EPA's Carcinogen Risk Assessment Guidelines

EPA has recently published Proposed Guidelines for Carcinogen Risk Assessment (USEPA, 1996), that revise the 1986 Cancer Guidelines. These revisions are designed to ensure that the Agency's cancer risk assessment methods reflect the most current scientific information.[6] Although many fundamental aspects of the current cancer risk assessment approach have been retained, there are a number of key changes proposed, some of which address the specific problems mentioned in the preceding section. Proposed changes to the cancer guidelines are discussed here because many of the changes that are proposed are incorporated into the AWQC methodology in this document.

The key changes in the Proposed Cancer Guidelines include:

(a) Hazard assessment promotes the analysis of all biological information rather than just tumor findings.

(b) An agent's mode of action in causing tumors is emphasized to reduce the uncertainty in describing the likelihood of harm and in determining the dose-response approach(es).

(c) Increased emphasis on hazard characterization to integrate the data analysis of all relevant studies into a weight-of-evidence conclusion of hazard, to develop a working conclusion regarding the agent's mode of action in leading to tumor development, and to describe the conditions under which the hazard may be expressed (*e.g.*, route, pattern, duration and magnitude of exposure).

(d) A weight-of-evidence narrative with accompanying descriptors (listed in Section 3 below) replaces the current alphanumeric classification system. The narrative is intended for the risk manager and lays out a summary of the key evidence, describes the agent's mode of action, characterizes the conditions of hazard expression, and recommends appropriate dose-response approach(es). Significant strengths, weaknesses, and uncertainties of contributing evidence are highlighted. The overall conclusion as to the likelihood of human carcinogenicity is given by route of exposure.

(e) Biologically based extrapolation models are the preferred approach for quantifying risk. It is anticipated, however that the necessary data for the parameters used in such models will not be available for most chemicals. The new guidelines allow for alternative quantitative methods, including several default approaches.

(f) Dose-response assessment is a two-step process. In the first step, response data are modeled in the range of observation, and in the second step, a determination of the point of departure or range of extrapolation below the range of observation is made. In addition to modeling tumor data, the new guidelines call for the use and modeling of other kinds of responses if they are considered to be more informed measures of carcinogenic risk.

(g) Three default approaches are provided—linear, nonlinear, or both. Curve fitting in the observed range would be used to determine a point of departure. A standard point of departure is proposed as the effective dose corresponding to the lower 95 percent limit on a dose associated with 10 percent extra risk (LED_{10}).[7] The linear default is a straight line extrapolation from the response at LED_{10} to the origin (zero dose, zero extra risk). The nonlinear default begins with the identified point of departure and provides an MoE analysis rather than estimating the probability of effects at low doses. The MoE analysis is used to determine the appropriate margin between the Pdp and the projected exposure level (*i.e.*, the AWQC). The key objective of the MoE analysis is to describe for the risk manager how rapidly responses may decline with dose. Other factors are also considered in the MoE analysis (nature of the response, human variation, species differences, biopersistence).

(h) Refining the approach used to calculate oral human equivalent dose when assessments are based on animal bioassays including a change in the default assumption for interspecies dose scaling (using body weight raised to the ¾ power).

With recent proposals to emphasize mode of action understanding in risk assessment and to model response data in the observable range to derive points of departure or BMDs for both cancer and noncancer endpoints, EPA health risk assessment practices are beginning to come together. The modeling of observed response data to identify points of departure in a standard way will help to harmonize cancer and noncancer dose-response approaches

[6] They are referred to hereafter as the Proposed Cancer Guidelines.

[7] Use of the LED_{10} as the point of departure is recommended with this methodology, as it is with the Proposed Cancer Guidelines. Public comments were requested on the use of the LED_{10}, ED_{10}, or other points. EPA is currently evaluating these comments and any changes in the Cancer Guidelines will be reflected in the Final AWQC Methodology.

and permit comparisons of cancer and noncancer risk estimates.

The Notice, 61 FR 17960 April 23, 1996, and its supporting administrative record should be consulted for detailed information (USEPA, 1996).

3. Revised Carcinogen Risk Assessment Methodology for Deriving AWQC[8]

The revised methodology for deriving numerical AWQC for carcinogens incorporates the principles consistent with the Proposed Cancer Guidelines. This discussion of the revised methodology for carcinogens focuses primarily on the quantitative aspects of deriving numerical AWQC values. It is important to note that the cancer risk assessment process outlined in the Proposed Cancer Guidelines is not limited just to the quantitative aspects. A numerical AWQC value derived for a carcinogen is to be accompanied by appropriate hazard assessment and risk characterization information.

This Section contains a discussion of the weight-of-evidence narrative, that describes all information relevant to a cancer risk evaluation, followed by a discussion of the quantitative aspects of deriving numerical AWQC values for carcinogens. It is assumed that data from an appropriately conducted animal bioassay provide the underlying basis for deriving the AWQC value. The discussion focuses on the following: (1) dose estimation; (2) characterizing dose-response relationships in the range of observation and at low, environmentally relevant doses; (3) calculating the AWQC value; (4) risk characterization; and (5) use of toxicity equivalent factors (TEF) and Relative Potency Estimates. The first three listed topics encompass the quantitative aspects of deriving AWQC for carcinogens.

(a) Weight-of-Evidence Narrative.[9] As stated in the EPA Proposed Cancer Guidelines, the new method includes a weight-of-evidence narrative that is based on an overall weight-of-evidence of biological and chemical/physical considerations. Hazard assessment information accompanying an AWQC value for a carcinogen is provided in the form of a weight-of-evidence narrative as described in the footnote. Of particular importance is that the weight-of-evidence narrative explicitly provides adequate support based on human studies, animal bioassays, and other key evidence for the conclusion that the substance is a "known or likely" human carcinogen from exposures through drinking water and/or fish ingestion. The Agency emphasizes the importance of providing an explicit discussion of the mode of action for the substance in the weight-of-evidence narrative, including a discussion that relates the mode of action to the quantitative procedures used in the derivation of the AWQC.

(b) Dose Estimation.

(1) Determining the Human Equivalent Dose. An important objective in the dose-response assessment is to use a measure of internal or delivered dose at the target site where possible. This is particularly important in those cases where the carcinogenic response information is being extrapolated to humans from animal studies. Generally, the measure of dose provided in the underlying human studies and animal bioassays is the applied dose, typically given in terms of unit mass per unit body weight per unit time, (*e.g.*, mg/kg-day). When animal bioassay data are used, it is necessary to make adjustments to the applied dose values to account for differences in pharmacokinetics between animals and humans that affect the relationship between applied dose and delivered dose at the target organ.

In the estimation of a human equivalent dose, the Proposed Cancer Guidelines recommend that when adequate data are available, the doses used in animal studies can be adjusted to equivalent human doses using toxicokinetic information on the particular agent. However, in most cases, there are insufficient data available to compare doses between species. In these cases, the estimate of a human equivalent dose is based on science policy default assumptions. To derive an equivalent human oral dose from animal data, the new default procedure is to scale daily applied oral doses experienced for lifetime in proportion to body weight raised to the ¾ power. The adjustment factor is used because metabolic rates, as well as most rates of physiological processes that determine the disposition of dose, scale this way. Thus, the rationale for this factor rests on the empirical observation that rates of physiological processes consistently tend to maintain proportionality with body weight raised to ¾ power (USEPA, 1996).

$$\text{Human Equivalent Dose} = (\text{Animal Dose})[(\text{Animal BW})/(\text{Human BW})]^{1/4}$$

The use of body weight raised to ¾ power ($BW^{3/4}$) is a departure from the scaling factor of $BW^{2/3}$, which was based on surface area adjustment and was included in the 1980 AWQC National Guidelines as well as the 1986 Cancer Guidelines. A more extensive discussion of the rationale and data supporting the Agency's adoption of this scaling factor is in USEPA (1992) and the Proposed Cancer Guidelines.

(2) Dose Adjustments for Less-than-Lifetime Exposure Periods. In the 1980 AWQC National Guidelines, two other dose-related adjustments were discussed. The first addressed situations where the experimental dosing period (l_e) is less than the duration of the experiment (L_e). In these cases, the average daily dose is adjusted downward by multiplying by the ratio (l_e/L_e) to obtain an equivalent average daily dose for the full experimental period. This adjustment would also be used in situations where animals are dosed fewer than 7 days per week. If, for example, "daily" dosing is done only 5 days each week, the lifetime daily dose would be calculated as 5/7 of the actual dose given on each of the 5 days.

The second dose adjustment addresses situations where the experimental duration (L_e) is substantially less than the natural lifespan (L) of the test animal. For example, for mice and rats the natural lifespans are defined as 90 weeks and 104 weeks respectively. If the study duration is less than 78 weeks for mice, or less than 90 weeks for rats, applied doses are adjusted by dividing by a factor of $(L/L_e)^3$. (Alternatively, the cancer potency factor obtained from the study could be adjusted upward by multiplying by the factor of $(L/L_e)^3$.)

This adjustment is considered necessary because a shortened experimental duration does not permit

[8] Additional information regarding the revised methodology may be found in Ambient Water Quality Criteria Derivation Methodology—Human Health. Technical Support Document. (USEPA, 1998).

[9] The weight-of-evidence narrative is intended for the risk manager, and thus explains in nontechnical language the key data and conclusions, as well as the conditions for hazard expression. Conclusions about potential human carcinogenicity are presented by route of exposure. Contained within this narrative are simple likelihood descriptors that essentially distinguish whether there is enough evidence to make a projection about human hazard (i.e., known human carcinogen, likely to be a human carcinogen, or not likely to be a human carcinogen) or whether there is insufficient evidence to make a projection (i.e., the cancer potential cannot be determined because evidence is lacking, conflicting, inadequate, or because there is some evidence but it is not sufficient to make a projection to humans). Because one encounters a variety of data sets on agents, these descriptors are not meant to stand alone; rather, the context of the weight-of-evidence narrative is intended to provide a transparent explanation of the biological evidence and how the conclusions were derived. Moreover, these descriptors should not be viewed as classification categories (like the alphameric system), which often obscure key scientific differences among chemicals. The new weight-of-evidence narrative also presents conclusions about how the agent induces tumors and the relevance of the mode of action to humans, and recommends a dose-response approach based on the mode-of-action understanding (USEPA, 1996).

the full expression of cancer incidence that would be expressed during a lifetime study. In addition, most carcinogenic responses are manifest in humans and animals at higher rates later in life. Age-specific rates of cancer increase as a constant function of the background cancer rate (Anderson, 1983) by the 2nd or higher power of age (Doll, 1971). In the adjustment recommended here, it is assumed that the cumulative tumor rate will increase by at least the 3rd power of age. It is important to note that although both dose adjustments discussed in this Section were included in the 1980 AWQC National Guidelines, the second adjustment has not been commonly used in practice.

(3) Dose-Response Analysis. If data on the agent are sufficient to support the parameters of a biologically based or case-specific model and the purpose of the assessment is such as to justify investing resources supporting use, this is the first choice for both the observed tumor and related response data and for extrapolation below the range of observed data in either animal or human studies.

(c) Characterizing Dose-Response Relationships in the Range of Observation. The first quantitative component in the derivation of AWQC for carcinogens is the dose-response assessment in the range of observation. For most agents, in the absence of adequate data to generate a biologically based model or case-specific model, dose-response relationships in the observed range can be addressed through curve-fitting procedures for response data. It should be noted that the 1996 proposed guidelines call for modeling of not only tumor data in the observable range, but also other responses thought to be important events proceeding tumor development (e.g., DNA adducts, cellular proliferation, receptor binding, hormonal changes). The modeling of these data are intended to better inform the dose-response assessment by providing insights into the relationships of exposure (or dose) and tumor response below the observable range. These nontumor response data can only play a role in the dose-response assessment if the agent's carcinogenic mode of action is reasonably understood, as well as, the role of that precursor event.

The Proposed Cancer Guidelines recommend calculating the lower 95 percent confidence limit on a dose associated with an estimated 10 percent increased tumor or relevant nontumor response (LED_{10}) for quantitative modeling of dose-response relationships in the observed range. The estimate of the LED_{10} is used as the point of departure for low-dose extrapolations discussed below. The LED_{10}, the lower 95 percent confidence limit on a dose associated with 10 percent extra risk, a standard point of departure, is adopted as a matter of science policy to remain as consistent and comparable from case to case as possible. It is also a convenient comparison point for noncancer endpoints. The rationale supporting use of the LED_{10} is that a 10 percent response is at or just below the limit of sensitivity of discerning a significant difference in most long-term rodent studies. The lower confidence limit on dose is used to appropriately account for experimental uncertainty (Barnes *et al.*, 1995); it does not provide information about human variability. The estimate of the LED_{10} involves considerable judgment in dealing with uncertainties related to such factors as selection of approach, number and spacing of doses, sample sizes, the precision and accuracy of dose measurements, and the accuracy of pathological findings.

For some data sets, a choice of the point of departure other than the LED_{10} may be appropriate. The objective is to determine the lowest reliable part of the dose-response curve for the beginning of the second step of the dose-response assessment—determine the extrapolation range. Therefore, if the observed response is below the LED_{10}, then a lower point may be a better choice (*e.g.*, LED_5). Moreover, some forms of data may not be amenable to curve-fitting estimation, but to estimation of a LOAEL or NOAEL instead, *e.g.*, certain continuous data.

Analysis of human studies in the observed range is designed on a case-by-case basis depending on the type of study and how dose and response are measured in the study.

(1) Extrapolation to Low, Environmentally Relevant Doses. In most cases, the derivation of an AWQC will require an evaluation of carcinogenic risk at environmental exposure levels substantially lower than those used in the underlying bioassay. Various approaches are used to extrapolate risk outside the range of observed experimental data. In the Proposed Cancer Guidelines, the choice of extrapolation method is largely dependent on the mode of action. The Proposed Guidelines also indicate that the choice of extrapolation procedure follows the conclusions developed in the hazard assessment about the agent's carcinogenic mode of action, and it is this mode of action understanding that guides the selection of the most appropriate dose-response extrapolation procedure. It should be noted that the term "mode of action" is deliberately chosen in the new guidelines in lieu of the term "mechanism" to indicate using knowledge that is sufficient to draw a reasonable working conclusion without having to know the processes in detail as the term mechanism might imply. The proposed guidelines preferred the choice of a biologically based model, if the parameters of such models can be calculated from data sources independent of tumor data. It is anticipated that the necessary data for such parameters will not be available for most chemicals. Thus, the new guidelines allow for several default extrapolation approaches (low-dose linear, nonlinear, or both).

(2) Biologically Based Modeling Approaches. If a biologically based or case-specific modeling approach has been used to characterize the dose-response relationships in the observed range, and the confidence in the model is high, it may be used to extrapolate the dose-response relationship to environmentally relevant doses. For the purposes of risk management derivation of AWQC, the environmentally relevant dose would be the RSD associated with incremental lifetime cancer risks in the 10^{-4} to 10^{-6} range for carcinogens on which a linear extrapolation approach is applied.[10] The use of the RSD and the Pdp/SF to compute the AWQC is presented in Appendix II, Section A.3(d), below. Although biologically based and case-specific approaches are appropriate both for characterizing observed dose-response relationships and extrapolating to environmentally relevant doses, it is not expected that adequate data will be available to support the use of such approaches for most substances. In the absence of such data, the default linear approach, the nonlinear (margin of exposure) approach, or both linear and nonlinear approaches will be used.

(3) Default Linear Extrapolation Approach. The default linear approach proposed here is a replacement of the LMS approach that has served as the default approach for EPA cancer risk assessments. This new approach is used in the derivation of AWQC for (1) agents with a mode of action of gene mutation due to DNA reactivity; (2) agents with evidence that supports a mode of action other than DNA reactivity that are better supported by the assumption of low-dose linearity; and (3) carcinogenic agents lacking information on the mode

[10] For discussion of the cancer risk range, see Appendix II, Section A and Appendix III, Section C.1(a).

of action. The proposed default linear approach is considered generally conservative regarding the protection of public health. Evidence of effects on cell growth control via direct interaction with DNA constitutes an expectation of a linear dose-response relationship in the low dose range, unless there is other information to the contrary.

The procedures for implementing the default linear approach begin with the estimation of a point of departure as described above. The point of departure, LED_{10}, reflects the interspecies conversion to the human equivalent dose and the other adjustments for less-than-lifetime experimental duration. In most cases, the extrapolation for estimating response rates at low, environmentally relevant exposures is accomplished by drawing a straight line between the response at the point of departure and the origin (i.e., zero dose, zero extra risk). This is mathematically represented as:

$$y = mx + b \qquad b = 0 \qquad \text{(Equation III A-2)}$$

Where:

y = Response or incidence

m = Slope of the line (cancer potency factor) = $\frac{\Delta y}{\Delta x}$

x = Dose

b = Slope intercept

The slope of the line, "m" (the estimated cancer potency factor at low doses), is computed as:

$$m = \frac{0.10}{LED_{10}} \qquad \text{(Equation III A-3)}$$

The RSD is then calculated for a specific incremental targeted lifetime cancer risk (in the range of 10^{-4} to 10^{-6}) as:

$$RSD = \frac{\text{Target Incremental Cancer Risk}}{m} \qquad \text{(Equation III A-4)}$$

Where:

RSD=Risk-specific dose (mg/kg-day)

Target Incremental Cancer Risk [11]=Value in the range of 10^{-4} to 10^{-6}

m=Cancer potency factor $(mg/kg\text{-}day)^{-1}$

The use of the RSD to compute the AWQC is described in Section D below.

(4) Default Nonlinear Approach. As discussed in the Proposed Cancer Guidelines, the use of a nonlinear approach for risk assessment is recommended where there is no evidence for linearity and there is sufficient evidence to support an assumption of nonlinearity.

The nonlinear approach is indicated for agents having a mode of action that may lead to a dose-response relationship that is nonlinear, with response falling much more quickly than linearly with dose, or being most influenced by individual differences in sensitivity. The mode of action may theoretically be nonlinear because of a threshold (e.g., the carcinogenic response may be a secondary effect of toxicity or of an induced physiological change that is itself a threshold phenomenon).

Mode of action data are used for all cases. The nonlinear approach may be used, for instance, in the case of an organophosphate, where the chemical is not mutagenic and causes only stone formation in male rat bladders at high doses. This dynamic leads to tumor formation only (at the high doses). Stone and subsequent tumor formation are not expected to occur at doses lower than those that induce the physiological changes that lead to stone formation. (More detail on this chemical is provided in the cancer section of the Technical Support Document). EPA does not generally try to distinguish between modes of action that might imply a "true threshold" from others with a nonlinear dose-response relationship, because there is usually not sufficient information to distinguish between these empirically.

The nonlinear margin of exposure (MoE) approach in the Proposed Cancer Guidelines compares an observed response rate such as the LED_{10}, NOAEL, or LOAEL with actual environmental exposures of interest by computing the ratio between the two. In the context of deriving AWQC, the environmentally relevant exposures are targets rather than actual exposures.

If the evidence for an agent indicates a nonlinearity (e.g., when carcinogenicity is secondary to another toxicity for which there is a threshold), the MoE analysis for the toxicity is similar to what is done for a noncancer endpoint, and an RfD or RfC for that toxicity may also be estimated and considered in the cancer assessment. However, a threshold of carcinogenic response is not necessarily assumed. It should be noted that for cancer assessment, the margin of exposure analysis begins from a point of departure that is adjusted for toxicokinetic differences between species to give a human equivalent dose.

To support the use of the MoE approach, information is provided in the risk assessment about the current understanding of the phenomena that may be occurring as dose (exposure) decreases substantially below the observed data. This provides information about the risk reduction that is expected to accompany a lowering of exposure. Information regarding the various factors that influence the selection of the SF in an MoE approach are included in the discussion.

There are two main steps in the MoE approach. The first step is the selection of a point of departure (Pdp). The Pdp may be the LED_{10} for tumor incidence, or in some cases, it may also be appropriate to use a NOAEL or LOAEL value from a response that is a precursor to tumors. When animal data are used, the Pdp is a human equivalent dose or concentration arrived at by interspecies dose adjustment (as discussed previously in this Notice) or toxicokinetic analysis.

The second step in using MoE analysis to establish AWQC is the selection of an appropriate margin or SF to apply to the Pdp. This is supported by analyses in the MoE discussion in the risk assessment. The following issues should be considered when establishing the overall SF for the derivation of AWQC using the MoE approach (others may be found appropriate in specific cases):

- The slope of the observed dose-response relationship at the point of departure and its uncertainties and implications for risk reduction associated with exposure reduction.

(A steeper slope implies a greater reduction in risk as exposure decreases. This may support a smaller margin);

- Variation in sensitivity to the phenomenon involved, among members of the human population;
- Variation in sensitivity between humans and the animal study population;
- The nature of the response used for the dose-response assessment, for instance, a precursor effect, or tumor response. The latter may support a greater margin of exposure; and

[11] In 1980, the target lifetime cancer risk range was set at 10^{-7} to 10^{-5}. However, both the expert panel for the AWQC workshop (1992) and SAB recommended that EPA change the risk range to 10^{-6} to 10^{-4}, to be consistent with drinking water. See Appendix I, Section D for more details.

■ Persistence of the agent in the body. This is particularly relevant when precursor data from less-than-lifetime studies are the response data being assessed.

As a default assumption for two of these points, the Proposed Cancer Guidelines recommend a factor of no less than 10-fold each be employed to account for human variability and for interspecies differences in sensitivity when humans may be more sensitive than animals. When data indicate that humans are less sensitive than animals, a default factor of no smaller than 1/10 fraction may be employed to account for this. If information about human variability or interspecies differences is available, it is used.

After considering all the issues together, the risk manager decides on the margin of safety (MoS). The size of the MoS is a matter of policy and is selected on a case-by-case basis, considering the weight-of-evidence and the margin of exposure analysis provided in the risk assessment.[12]

(5) Both Linear and Nonlinear Approaches. In some cases both linear and nonlinear procedures may be used. When data indicate that there may be more than one operant mode of action for cancer induction at different tumor sites, an appropriate procedure is used for each site (USEPA, 1996). The use of both the default linear approach and the nonlinear approach may be appropriate to discuss implications of complex dose-response relationships. For example, if it is apparent that an agent is both DNA reactive and is highly active as a promoter at high doses, and there are insufficient data for modeling, both linear and nonlinear default procedures may be needed to decouple and consider the contribution of both phenomena (USEPA, 1996). For further discussion on making risk assessment decisions between these approaches, refer to the Proposed Cancer Guidelines (USEPA, 1996).

(d) AWQC Calculation.

Linear Approach

The following equation is used for the calculation of the AWQC for carcinogens where an RSD is obtained from the default linear approach:

$$AWQC = RSD \cdot \left(\frac{BW}{DI + (FI \cdot BAF)} \right) \qquad \text{(Equation IIIA-5)}$$

Nonlinear Approach

In those cases where the nonlinear, MoE approach is used, a similar equation is used to calculate the AWQC[13]

$$AWQC = \frac{Pdp}{SF} \cdot RSC \cdot \left(\frac{BW}{DI + (FI \cdot BAF)} \right) \qquad \text{(Equation IIIA-6)}$$

Where:
AWQC=Ambient water quality criterion (mg/L)
RSD=Risk-specific dose (mg/kg-day)
Pdp=Point of departure (mg/kg-day)
SF=Safety factor (unitless)
BW=Human body weight (kg)
DI=Drinking water intake (L/day)
FI=Fish intake (kg/day)
BAF=Bioaccumulation factor (L/kg)
RSC=Relative source contribution (percentage or subtraction)

A difference between the AWQC values obtained using the linear and nonlinear approaches should be noted. First, the AWQC value obtained using the default linear approach corresponds to a specific estimated incremental lifetime cancer risk level in the range of 10^{-4} to 10^{-6}. In contrast, the AWQC obtained using the nonlinear approach does not describe a specific cancer risk.

The AWQC calculations shown above are appropriate for waterbodies that are used as sources of drinking water. If the waterbodies are not used as drinking water sources, the approach is modified. The drinking water value (DI in the equations above) is substituted with an incidental ingestion value (II) of 0.01 L/day. The incidental intake is assumed to occur from swimming and other activities. The fish intake value is assumed to remain the same.

The actual AWQC chosen for the protection of human health is based on a review of all relevant information, including cancer and noncancer data. The AWQC may, or may not, utilize the value obtained from the cancer analysis in the final AWQC value. The endpoint selected for the AWQC will be based on consideration of the weight-of-evidence and a complete analysis of all toxicity endpoints.

(e) Risk Characterization. Risk assessment is an integrative process that culminates ultimately into a risk characterization summary. Risk characterization is the final step of the risk assessment process in which all preceding analyses (i.e., hazard, dose-response, and exposure assessments) are tied together to convey the overall conclusions about potential human risk. This component of the risk assessment process characterizes the data in nontechnical terms, explaining the extent and weight-of-evidence, major points of interpretation and rationale, strengths and weaknesses of the evidence, and discusses alternative approaches, conclusions, and uncertainties that deserve serious consideration.

Risk characterization information is included with the numerical AWQC value and addresses the major strengths and weaknesses of the assessment arising from the availability of data and the current limits of understanding of the process of cancer causation. Key issues relating to the confidence in the hazard assessment and the dose-response analysis (including the low-dose extrapolation procedure used) are discussed. Whenever more than one interpretation of the weight-of-evidence for carcinogenicity or the dose-response characterization can be supported, and when choosing among them is difficult, the alternative views are provided along with the rationale for the interpretation chosen in the derivation of the AWQC value. Where possible, quantitative uncertainty analyses of the data are provided; at a minimum, a qualitative discussion of the important uncertainties is presented.

(f) Use of Toxicity Equivalence Factors (TEF) and Relative Potency Estimates. The 1996 Proposed Guidelines for Carcinogen Risk Assessment (USEPA, 1991; 1996) state: "A toxicity equivalence factor (TEF) procedure is one used to derive

[12] Guidance on selecting appropriate safety factors is provided in the Proposed Guidelines for Carcinogenic Risk Assessment (USEPA, 1996).

[13] Although appearing in this equation as a factor to be multiplied, the RSC can also be an amount subtracted.

quantitative dose-response estimates for agents that are members of a category or class of agents. TEFs are based on shared characteristics that can be used to order the class members by carcinogenic potency when cancer bioassay data are inadequate for this purpose. The ordering is by reference to the characteristics and potency of a well-studied member or members of the class. Other class members are indexed to the reference agent(s) by one or more shared characteristics to generate their TEFs." In addition, the Proposed Cancer Guidelines state that TEFs are generated and used for the limited purpose of assessment of agents or mixtures of agents in environmental media when better data are not available. When better data become available for an agent, its TEF should be replaced or revised. To date, according to the Proposed Cancer Guidelines, adequate data to support use of TEFs has been found in only one class of compounds (dioxins) (USEPA, 1989; 1996).

The uncertainties associated with TEFs are explained when this approach is used. This is a default approach to be used when tumor data are not available for individual components in a mixture. Relative potency factors (RPFs) can be similarly derived and used for agents with carcinogenicity or other supporting data. These are conceptually similar to TEFs, but are less firmly based on science and do not have the same levels of data to support them. TEFs and relative potencies are used only when there is no better alternative. When they are used, uncertainties associated with them are discussed. As of today, there are only three classes of compounds for which relative potency approaches have been examined by EPA: dioxins, polychlorinated biphenyls (PCBs), and polycyclic aromatic hydrocarbons (PAHs).

4. Request for Comments

EPA's Office of Water requests comments on the revised methodology in this Notice. Topics on which comment is particularly sought are indicated below. Comments on the Proposed Cancer Guidelines are not solicited here; the comment period on the Proposed Cancer Guidelines ended in August 1996. EPA will reflect changes in the final Cancer Guidelines in the final Human Health methodology. Comments on the application of the concepts and principles of the revised AWQC methodology are relevant and solicited here.

The Agency requests comment on the new approaches to dose-response assessment and modeling described in this Section.

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B. Noncancer Effects

1. 1980 AWQC National Guidelines for Noncancer Effects

In the 1980 AWQC National Guidelines, the Agency evaluated noncancer human health effects from exposure to chemical contaminants using ADI levels. ADIs were calculated by dividing NOAELs by SFs to obtain estimates of doses of chemicals that would not be expected to cause adverse effects over a lifetime of exposure. In accordance with the National Research Council report of 1977 (NAS, 1977), EPA used SFs of 10, 100, or 1,000, depending on the quality and quantity of the overall data base. In general, a factor of 10 was suggested when good-quality data identifying a NOAEL from human studies were available. A factor of 100 was suggested if no human data were available but the data base contained valid chronic animal data. For chemicals with no human data and scant animal data, a factor of 1,000 was recommended. Intermediate SFs could also be used for data bases that fell between these categories.

AWQC were then calculated using the ADI levels together with standard exposure assumptions about the rates of human ingestion of water and fish, and also accounting for intake from other sources (see Equation IB–1 in the Introduction). Surface water concentrations at or below the calculated criteria concentrations would be expected to result in human exposure levels at or below the ADI. Inherent in these calculations is the assumption that, generally, noncarcinogens exhibit a threshold.

2. Noncancer Risk Assessment Developments Since 1980

Since 1980, the risk assessment of noncarcinogenic chemicals has changed. To remove the value judgments implied by the words "acceptable" and "safety," the ADI and SF terms have been replaced with the terms RfD and UF/modifying factor (MF), respectively.

For the risk assessment of general systemic toxicity, the Agency currently uses the guidelines contained in the IRIS Background Document entitled Reference Dose (RfD): Description and Use in Health Risk Assessments. That document defines an RfD as "an estimate (with uncertainty spanning approximately an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects over a lifetime" (USEPA, 1993a). The most common approach for deriving the RfD does not involve dose-response modelling. Instead, an RfD for a given chemical is usually derived by first identifying the NOAEL for the most sensitive known toxicity endpoint, that is, the toxic effect that occurs at the lowest dose. This effect is called the critical effect. Factors such as the study methodology, the species of experimental animal, the nature of the toxicity endpoint assessed and its

relevance to human effects, the route of exposure, and exposure duration are critically evaluated in order to select the most appropriate NOAEL from among all available studies in the chemical's data base. If no appropriate NOAEL can be identified from any study, then the LOAEL for the critical effect endpoint is used and an uncertainty factor for LOAEL to NOAEL extrapolation is applied. Using this approach, the RfD is equal to the NOAEL (or LOAEL) divided by the product of uncertainty factors and, occasionally, a modifying factor:

$$\text{RfD (mg/kg/day)} = \frac{\text{NOAEL (or LOAEL)}}{\text{UF} \cdot \text{MF}} \qquad \text{(Equation IIIB-1)}$$

The definitions and guidance for use of the uncertainty factors and the modifying factor are provided in the IRIS Background Document and are repeated in Table IIIB–1.

The IRIS Background Document on the Reference Dose (USEPA, 1993a) provides guidance for critically assessing noncarcinogenic effects of chemicals and for deriving the RfD. Another reference on this topic is Dourson (1994). Furthermore, the Agency has also published separate guidelines for assessing specific toxic endpoints, such as developmental toxicity (USEPA, 1991a); reproductive toxicity (USEPA, 1996a); and neurotoxicity risk assessment (USEPA, 1995a). These endpoint-specific guidelines will be used for their respective areas in the hazard assessment step and will complement the overall toxicological assessment. It should be noted, however, that an RfD, derived using the most sensitive known endpoint, is considered protective against all noncarcinogenic effects.

TABLE IIIB–1.—UNCERTAINTY FACTORS AND THE MODIFYING FACTOR

Uncertainty Factor	Definition
UF_H	Use a 1, 3, or 10-fold factor when extrapolating from valid data in studies using long-term exposure to average healthy humans. This factor is intended to account for the variation in sensitivity (intraspecies variation) among the members of the human population.
UF_A	Use an additional factor of 1, 3, or 10 when extrapolating from valid results of long-term studies on experimental animals when results of studies of human exposure are not available or are inadequate. This factor is intended to account for the uncertainty involved in extrapolating from animal data to humans (interspecies variation).
UF_S	Use an additional factor of 1, 3, or 10 when extrapolating from less-than-chronic results on experimental animals when there are no useful long-term human data. This factor is intended to account for the uncertainty involved in extrapolating from less-than-chronic NOAELs to chronic NOAELs.
UF_L	Use an additional factor of 1, 3, or 10 when deriving an RfD from a LOAEL, instead of a NOAEL. This factor is intended to account for the uncertainty involved in extrapolating from LOAELs to NOAELs.
UF_D	Use an additional 3- or 10-fold factor when deriving an RfD from an "incomplete" data base. This factor is meant to account for the inability of any single type of study to consider all toxic endpoints. The intermediate factor of 3 (approximately ½ $\log_{10}$ unit, i.e., the square root of 10) is often used when there is a single data gap exclusive of chronic data. It is often designated as UF_D.
Modifying Factor	
	Use professional judgment to determine the MF, which is an additional uncertainty factor that is greater than zero and less than or equal to 10. The magnitude of the MF depends upon the professional assessment of scientific uncertainties of the study and data base not explicitly treated above (e.g., the number of species tested). The default value for the MF is 1.

Note: With each UF or MF assignment, it is recognized that professional scientific judgment must be used. The total product of the uncertainty factors and modifying factor should not exceed 3,000.

Similar to the procedure used in the 1980 AWQC National Guidelines, the revised derivation of AWQC values for noncarcinogens uses the RfD together with various assumptions concerning intake of the contaminant from both water and nonwater sources of exposure. The objective of the AWQC value for noncarcinogens is to ensure that human exposure to a substance related to its presence in surface water, combined with exposure from other sources, does not exceed the RfD. The algorithm for deriving AWQC for noncarcinogens using the RfD is presented as Equation ID–1 in the Introduction and discussed further in Appendix II, Section C in this Notice.

3. Issues and Recommendations Concerning the Derivation of AWQC for Noncarcinogens

During a review of the 1980 AWQC National Guidelines (USEPA, 1993b), the Agency identified several issues that must be resolved in order to develop a final revised methodology for deriving AWQC based on noncancer effects. These issues, as discussed below, mainly concern the derivation of the RfD as the basis for such an AWQC value. Foremost among these issues is whether the Agency should revise the present method or adopt entirely new procedures that use quantitative dose-response modelling for the derivation of the RfD. Other issues include the following:

- Presenting the RfD as a single point value or as a range to reflect the inherent imprecision of the RfD;
- Selecting specific guidance documents for derivation of noncancer health effect levels;
- Considering severity of effect in the development of the RfD;
- Using less-than-90-day studies as the basis for RfDs;
- Integrating reproductive/developmental, immunotoxicity, and neurotoxicity data into the RfD calculation;
- Applying pharmacokinetic data in risk assessments; and

■ Considering the possibility that some noncarcinogenic effects do not exhibit a threshold.

(a) Using the Current NOAEL–UF Based RfD Approach or Adopting More Quantitative Approaches for Noncancer Risk Assessment. The current NOAEL–UF-based RfD methodology, or its predecessor ADI/SF methodology, have been used since 1980. This approach assumes that there exists a threshold exposure below which adverse noncancer health effects are not expected to occur. Exposures above this threshold are believed to pose some risk to exposed individuals; however, the current approach does not address the nature and magnitude of the risk above the threshold level (i.e., the shape of the dose-response curve above the threshold). The NOAEL–UF-based RfD approach is intended primarily to ensure that the RfD value derived from the available data falls below the population effects threshold. However, the NOAEL–UF-based RfD procedure has limitations. In particular, this method requires that one of the actual experimental doses used by the researchers in the critical study be selected as the NOAEL or LOAEL value. The determination that a dose is a NOAEL or LOAEL will depend on the biological endpoints used and the statistical significance of the data. Statistical significance will depend on the number and spacing of dose groups and the numbers of animals used in each dose group. Studies using a small number of animals can limit the ability to distinguish statistically significant differences between measurable responses seen in dose groups and control groups. Furthermore, the determination of the NOAEL or LOAEL also depends on the dose spacing of the study. Doses are often widely spaced, typically differing by factors of three to ten. A study can identify a NOAEL and a LOAEL from among the doses studied, but the "true" NOAEL cannot be determined from those results. The study size and dose spacing limitations also limit the ability to characterize the nature of the expected response to exposures between the observed NOAEL and the LOAEL values.

The limitations of the NOAEL–UF approach have prompted development of alternative approaches that incorporate more quantitative dose-response information. The traditional NOAEL approach for noncancer risk assessment has often been a source of controversy and has been criticized in several ways. For example, experiments involving fewer animals tend to produce higher NOAELs and, as a consequence, may produce higher RfDs. The reverse would seem more appropriate in a regulatory context because larger sample sizes should provide greater experimental sensitivity. The focus of the NOAEL approach is only on the dose that is the NOAEL, and the NOAEL must be one of the experimental doses. It also ignores the shape of the dose-response curve. Thus, the slope of the dose-response plays little role in determining acceptable exposures for human beings. Therefore, in addition to the NOAEL–UF-based RfD approach described above, EPA is considering using other approaches that incorporate more quantitative dose-response information in appropriate situations for the evaluation of noncancer effects and the derivation of RfDs. However, the Agency wishes to emphasize that it still believes the NOAEL–UF RfD methodology is valid and can continue to be used to develop RfDs.

Two alternative approaches that may have relevance in assisting in the derivation of the RfD for a chemical are the BMD and the Categorical Regression approaches. These alternative approaches may overcome some of the inherent limitations in the NOAEL–UF approach. For example, the BMD analyses for developmental effects show that NOAELs from studies correlate well with a 5 percent response level (Allen et al., 1994). The BMD and the Categorical Regression approaches usually have greater data requirements than the RfD approach. Thus, it is unlikely that any one approach will apply to every circumstance; in some cases, different approaches may be needed to accommodate the varying data bases for the range of chemicals for which water quality criteria must be developed. Acceptable approaches will satisfy the following criteria: (1) Meet the appropriate risk assessment goal; (2) adequately describe the toxicity data base and its quality; (3) characterize the endpoints properly; (4) provide a measure of the quality of the "fit" of the model when a model is used for dose-response analysis; and (5) describe the key assumptions and uncertainties.

(1) The Benchmark Dose. The BMD is defined as the statistical lower confidence limit on the dose estimated to produce a predetermined level of change in response (the Benchmark Response, or BMR) relative to control. In the derivation of an RfD, the BMD is used as the dose to which uncertainty factors are applied instead of the NOAEL. The BMD approach first models a dose-response curve for the critical effect(s) using available experimental data. Several functional forms can be used to model the dose-response curve, such as polynomial or Weibull functions. To define a BMD from the modeled curve for quantal data, the assessor first selects the BMR. The choice of the BMR is critical. For quantal endpoints, a particular level of response is chosen (e.g., 1 percent, 5 percent, or 10 percent). For continuous endpoints, the BMR is the degree of change from controls and is based on what is considered a biologically significant change. The BMD is derived from the BMR dose by applying the desired confidence limit calculation. The RfD is obtained by dividing the BMD by one or more uncertainty factors, similar to the NOAEL approach. Because the BMD is used like the NOAEL to obtain the RfD, the BMR should be selected at or near the low end of the range of increased risks that can be detected in a study of typical size. Generally, this falls in the range between the ED_{01} and the ED_{10}.

The Agency is considering the use of a BMD approach to derive RfDs for those agents for which there is an adequate data base. There are a number of technical decisions associated with the application of the BMD technique. These include the following:

■ Selection of response data to model;

■ The form of the data used (continuous versus quantal);

■ The definition of an adverse response;

■ The choice of mathematical model (including use of nonstandard models for unusual data sets);

■ The choice of the measures of increased risk (extra risk versus additional risk);

■ The selection of the BMR;

■ Methods for calculating the confidence interval;

■ Selection of the appropriate BMD as the basis for the RfD (when multiple endpoints are modeled from a single study, when multiple models are applied to a single response, and when multiple BMDs are calculated from different studies); and

■ The use of uncertainty factors with the BMD approach.

These topics are discussed in detail in Crump et al. (1995) and the TSD that accompanies this Notice. The use of the BMD approach has been discussed in general terms by several authors (Gaylor, 1983; Crump, 1984; Dourson et al., 1985; Kimmel and Gaylor, 1988; Brown and Erdreich, 1989; Kimmel, 1990). The International Life Sciences Institute (ILSI) also held a major workshop on the BMD in September 1993; the workshop proceedings are summarized in ILSI (1993) and in Barnes et al. (1995). For further information on these technical issues,

the reader is referred to these publications.

The BMD approach addresses several of the quantitative or statistical criticisms of the NOAEL approach. These are discussed at greater length in Crump et al. (1995) and are summarized here. First, the BMD approach uses information on variability in the selected study rather than just a single data point, such as the NOAEL or LOAEL. By using response data from all of the dose groups to model a dose-response curve, the BMD approach allows for consideration of the steepness of the slope of the curve when estimating the ED_{10}. The use of the full data set also makes the BMD approach less sensitive to small changes in data than the NOAEL approach, which relies on the statistical comparison of individual dose groups. The BMD approach also allows consistency in the consideration of the level of effect (e.g., a 10 percent response rate) across endpoints.

The BMD approach accounts more appropriately for the size of each dose group than the NOAEL approach. Laboratory tests with fewer animals per dose group tend to yield higher NOAELs, and thus higher RfDs, because statistically significant differences in response rates are harder to detect. Therefore, in the NOAEL approach, dose groups with fewer animals lead to a higher (less conservative) RfD. In contrast, with the BMD approach, smaller dose groups will tend to have the effect of extending the confidence interval around the ED_{10}; therefore, the lower confidence limit on the ED_{10} (the BMD) will be lower. With the BMD approach, greater uncertainty (smaller test groups) leads to a lower (more conservative) RfD.

There are some issues to be resolved before the BMD approach is used routinely. These were identified in a 1996 Peer Consultation Workshop (USEPA, 1996b). Methods for routine use of the BMD are currently under development by EPA. Several RfCs and RfDs based on the BMD approach are included in EPA's IRIS data base. These include that for methyl mercury based on delayed postnatal development in humans; carbon disulfide based on neurotoxicity; 1,1,1,2-tetrafluoroethane based on testicular effects in rats; and antimony trioxide based on chronic pulmonary interstitial inflammation in female rats.

Various mathematical approaches have been proposed for modeling developmental toxicity data (e.g., Crump, 1984; Kimmel and Gaylor, 1988; Rai and Van Ryzin, 1985; Faustman et al., 1989), which could be used to calculate a BMD. Similar methods can be used to model other types of toxicity data, such as neurotoxicity data (Gaylor and Slikker, 1990, 1992; Glowa and MacPhail, 1995). The choice of the mathematical model may not be critical, as long as estimation is within the observed dose range. Since the model is used only to fit the observed data, the assumptions in a particular model regarding the existence or absence of a threshold for the effect may not be pertinent (USEPA, 1997). Thus, any model that suitably fits the empirical data is likely to provide a reasonable estimate of a BMD. However, research has shown that flexible models that are nonsymmetric (e.g., the Weibull) are superior to symmetric models (e.g., the probit) in estimating the BMD because the data points at the higher doses have less influence on the shape of the curve than at low doses. In addition, models should incorporate fundamental biological factors where such factors are known (e.g., intralitter correlation for developmental toxicity data) in order to account for as much variability in the data as possible. The Agency is currently supporting research studies to evaluate the application of several models to data sets for calculating the BMD.

(2) Categorical Regression. Categorical Regression is an emerging technique that may have relevance for the derivation of RfDs or for estimating risk above the RfD (Dourson et al., 1997; Guth et al., 1997). The Categorical Regression approach, like the BMD approach, can be used to estimate a dose that corresponds to a given probability of adverse effects. This dose would then be divided by uncertainty factors to establish a reference dose. However, unlike the BMD approach, the Categorical Regression approach can incorporate information on different health endpoints in a single dose-response analysis. For those health effects for which studies exist, responses to the substance in question are grouped into severity categories; for example (1) no effect, (2) no adverse effect, (3) mild-to-moderate adverse effect, and (4) frank effect. These categories correspond to the dose categories currently used in setting the RfD, namely, the no-observed-effect level (NOEL), NOAEL, LOAEL, and frank-effect level (FEL), respectively. Logistic transform or other applicable mathematical operations are used to model the probability of experiencing effects in a certain category as a function of dose (Harrell, 1986; Hertzberg, 1989). The "acceptability" of the fit of the model to the data can be judged using several statistical measures, including the X^2 statistic, correlation coefficients, and the statistical significance of its model parameter estimates.

The resulting function can be used to find a dose (or the lower confidence bound on the dose) at which the probability of experiencing adverse effects does not exceed a selected level, e.g., 10 percent. This dose (like the NOAEL or BMD) would then be divided by relevant uncertainty factors to calculate a RfD. For more detail on how to employ the categorical regression approach, see the discussion in the TSD.

As with the BMD approach, the Categorical Regression approach has the advantage of using more of the available dose-response data to account for response variability as well as accounting for uncertainty due to sample size through the use of confidence intervals. Additional advantages of categorical regression include the combining of data sets prior to modeling, thus allowing the calculation of the slope of a dose-response curve for multiple adverse effects rather than only one effect at a time, and the ability to estimate risks for different levels of severity from exposures above the RfD.

On the other hand, as with BMD, opinions differ over the amount and adequacy of data necessary to implement the method. The Categorical Regression approach also requires judgments regarding combining data sets, judging goodness-of-fit, and assigning severity to a particular effect. Furthermore, this approach is still in the developmental stage. It is not recommended for routine use, but may be used when data are available and justify the extensive analyses required.

(3) Summary. Whether a NOAEL-based methodology, a BMD, a Categorical Regression model, or other approach is used to develop the RfD, the dose-response-evaluation step of a risk assessment process should include additional discussion about the nature of the toxicity data and its applicability to human exposure and toxicity. The discussion should present the range of doses that are effective in producing toxicity for a given agent; the route, timing, and duration of exposure; species specificity of effects; and any pharmacokinetic or other considerations relevant to extrapolation from the toxicity data to human-health-based AWQC. This information should always accompany the characterization of the adequacy of the data.

(b) Presenting the RfD as a Single Point or as a Range for Deriving AWQC. Although the RfD has traditionally been presented and used as a single point, its

definition contains the phrase ". . . an estimate (with uncertainty spanning perhaps an order of magnitude) . . ." (USEPA, 1993a). Underlying this concept is the reasoning that the selection of the critical effect and the total uncertainty factor used in the derivation of the RfD is based on the "best" scientific judgment, and that competent scientists examining the same data base could derive RfDs which varied within an order of magnitude.

In one case, the RfD was presented as a point value within an accompanying range. EPA derived a single number as the RfD for arsenic (0.3 µg/kg-day), but added that "strong scientific arguments can be made for various values within a factor of 2 or 3 of the currently recommended RfD value, i.e., 0.1 to 0.8 µg/kg/day" (USEPA, 1993c). EPA noted that regulatory managers should be aware of the flexibility afforded them through this action.

In today's Notice, EPA discusses situations where the risk manager can consider a range around the point estimate. As explained further below, the Agency is recommending that sometimes considering the use of a range for the RfD is more appropriate in characterizing risk than only the use of the point estimate. The selection of an appropriate range must be determined for each individual situation, since several factors affect the magnitude of the range associated with the RfD. For example, the completeness of the data base plays a major role. Observing similar effects in several animal species, including humans, can increase confidence in the selection of the critical effect and thereby narrow the range of uncertainty. Other factors that can affect the precision are: the slope of the dose-response curve, seriousness of the observed effect, dose spacing, and possibly the route of the experimental doses. For example, a steep dose-response curve indicates that relatively large differences in response occur with a small change in dose. For chemicals that elicit a serious effect near the LOAEL, an additional uncertainty factor is often used in the RfD derivation to protect against less serious but still observable adverse effects that could occur at lower doses, thus increasing the range of uncertainty for the RfD. Dose spacing and the number of animals in the study groups used in the experiment can also affect the confidence in the RfD.

To derive the AWQC, the point estimate of the RfD is the default. Based on considerations of available data, the use of another number within the range defined by the UF could be justified in a specific case. This means that there are risk considerations which indicate that some value in the range other than the point estimate may be more appropriate than the point estimate, based on human health or environmental fate considerations.

Because the uncertainty around the dose-response relationship increases as extrapolation below the observed data increases, the use of a point within the RfD range may be more appropriate in characterizing the risk than the use of the point estimate. Therefore, as a matter of risk management policy, it is proposed that if the product of the UFs and MF used to derive the RfD is 100 or less, there would be no consideration of a range because there is great confidence in the hazard and dose-response characterization. If greater than 100 and less than 1,000, the maximum range that could be considered would be one half of a $\log_{10}$ (3-fold) or a number ranging from the point estimate divided by 1.5 to the point estimate multiplied by 1.5. At 1,000 and above, the maximum range would be a $\log_{10}$ (10-fold) or a number ranging from the point estimate divided by 3 to the point estimate multiplied by 3. Use of any point other than the RfD must be justified.

The following examples illustrate situations where EPA believes the use of a range is not appropriate. The RfD for zinc (USEPA, 1992) is based on consideration of nutritional data, a minimal LOAEL, and a UF of 3. If a factor of 3 were used to bound the RfD for zinc, then the upper-bound level would approach the minimal LOAEL. This situation must be avoided, since it is unacceptable to set a standard at levels that may cause an adverse effect. Another case in point is nitrate. Since the RfD for nitrate was based on the lack of effects in human infants and was assigned a UF of 1 (USEPA, 1991b), it would be difficult if not impossible to justify the use of an RfD range for infants exposed to nitrate. Table IIIB–2 gives examples of factors to consider when determining whether to use the point estimate of the RfD, or a value higher or lower than the point estimate (see the TSD for additional detail on this topic).

TABLE IIIB–2.—SOME SCIENTIFIC FACTORS TO CONSIDER WHEN USING THE RFD RANGE

Use point estimate RfD	—Default position —Total uncertainty factor, modifying factor product 100 or less —Essential nutrient
Use lower range of RfD	—Increased bioavailability from medium —The seriousness of the effect and whether or not it is reversible —A shallow dose-response curve in the range of observation —Exposed group contains a sensitive population (e.g., children or fetuses)
Use upper range of RfD	—Decreased bioavailability with humans —RfD based on minimal LOAEL and large uncertainty factor —A steep dose-response curve in the range of observation —No sensitive populations identified

The risk-characterization step of the risk assessment provides a mechanism for communicating such issues. The risk manager must be informed of those specific cases when it is not scientifically correct to estimate a RfD range. In addition, the risk characterization should provide risk managers with guidelines (see Table IIIB–2) on the scientific basis for using a value within the range as the RfD.

(c) Guidelines to be Adopted for Derivation of Noncancer Health Effects Values. The Agency is currently using IRIS Background Document 1A entitled Reference Dose (RfD): Description and Use in Health Risk Assessments as the general basis for the risk assessment of noncarcinogenic effects of chemicals (USEPA, 1993a). EPA recommends continued use of this document for this purpose. However, it should be noted that the process for evaluating chemicals for inclusion in IRIS is undergoing revision. The Agency is currently conducting a pilot program for the continued development of the IRIS

assessment process. Under this program, a more integrated assessment for cancer and noncancer effects is being developed for 11 chemicals: arsenic, bentazon, beryllium, chlordane, chromium compounds, cumene, methyl methacrylate, methylene diphenyl isocyanate, napthalene, tributyltin oxide and vinyl chloride (USEPA, 1996c). The results for these 11 are expected to be in IRIS soon. A second set of chemical assessments have also been initiated and are expected to be complete by the end of 1998. The second set includes the following eight chemicals: acetonitrile; barium; benzene; 1,3-butadiene; cadmium; chloroethane; diesel emissions; and ethylene glycol butyl ether (USEPA 1998). A third set of chemicals is planned for completion by the end of 1999, which includes boron; bromate; chloral hydrate; chloroform; dichloroacetic acid; 1,3-dichloropropene; formaldehyde; lindane; nitrobenzene; pentachlorophenol; PCBs (noncancer endpoints); styrene; tetrachloroethylene; tetrahydrofuran; toxaphene; trichloroethylene; and vinyl acetate (USEPA, 1998).

(d) Treatment of Uncertainty Factors/ Severity of Effects During the RfD Derivation and Verification Process. During the RfD derivation and review process, EPA considers the uncertainty of extrapolations between animal species and within individuals of a species, as well as specific uncertainties associated with the completeness of the data base, as described in Table IIIB–1.

The Agency's RfD Work Group has always considered the severity of the observed effects induced by the chemical under review when choosing the value of the UF with a LOAEL. For example, during the derivation and verification of the RfD for zinc (USEPA, 1992), an uncertainty factor less than the standard factor of 10 (UF of 3) was assigned to the relatively mild adverse effects seen in experimental studies in humans, namely, a decrease in erythrocyte superoxide dismutase activity. EPA recommends that an assessment of the severity of the critical effect be determined when deriving an RfD and that risk managers be made aware of the severity of the effect and the weight placed on this attribute of the effect when the RfD was derived.

(e) Use of Less-Than-90–Day Studies to Derive RfDs. Generally, less-than-90-day experimental studies are not used to derive an RfD. This is based on the rationale that studies lasting for less than 90 days may be too short to detect various toxic effects. However, EPA, has in certain circumstances, derived an RfD based on a less-than-90-day study. For example, the RfD for nonradioactive effects of uranium is based on a 30-day rabbit study (USEPA, 1989). The short-term exposure period was used since it was adequate for determining doses that cause chronic toxicity. In other cases, it may be appropriate to use a less-than-90-day study because the critical effect is expressed in less than 90 days. For example, the RfD for nitrate was derived and verified using studies that were less than 3-months duration (USEPA, 1991b). The reason for this decision was that the critical effect, methemoglobinemia in infants, occurs in less than 90 days. When it can be demonstrated from other data in the toxicological data base that the critical adverse effect is expressed within the study period and that a longer exposure duration would not exacerbate the observed effect or cause the appearance of some other adverse effect, the Agency may choose to use less-than-90-day studies as the basis of the RfD. Such values would have to be used with care because of the uncertainty in determining if other effects might be expressed if exposure was of greater duration than 90 days.

(f) Use of Reproductive/ Developmental, Immunotoxicity, and Neurotoxicity Data as the Basis for Deriving RfDs. All relevant toxicity data have some bearing on the RfD derivation and verification and are considered by EPA. The "critical" effect is the adverse effect most relevant to humans or, in the absence of an effect known to be relevant to humans, the adverse effect that occurs at the lowest dose in animal studies. For example, if the critical effect is neurotoxicity, EPA may use this specific toxicity data as the basis for the derivation and verification of an RfD, as it did for the RfD for acrylamide. Moreover, the Agency is continually revising its procedures for noncancer risk assessment. For example, EPA has recently released guidelines for deriving developmental RfDs (RfD_{DT}, USEPA, 1991a), for using reproductive toxicity (USEPA, 1996a), and neurotoxicity (USEPA, 1995) data in risk assessments. The Agency is currently working on guidelines for using immunotoxicity to derive RfDs. In addition, the Agency is proceeding with the process of generating acceptable emergency health levels for hazardous substances in acute exposure situations based on established guidelines (NRC, 1993).

(g) Applicability of Physiologically Based Pharmacokinetic (PBPK) Data in Risk Assessment. EPA believes that all pertinent data should be used in the risk assessment process, including PBPK data. In fact, the Agency has used PBPK data in deriving the RfD for cadmium and other compounds. In addition, the Agency is currently using PBPK data to better characterize human inhalation exposures from animal inhalation experiments during derivation/ verification of RfCs. In analogy to the RfD, the RfC is considered to be an estimate of a level in the air that is not anticipated to cause adverse effects over a lifetime of inhalation exposure (Jarabek et al., 1990). With RfCs, a kinetic adjustment is made for the differences between animals and humans in respiration and deposition. This procedure results in calculation of a "human equivalent concentration." Based on the use of these procedures, an interspecies UF of 3 (i.e., approximately $10^{0.5}$), instead of the standard factor of 10, is used in the RfC derivation.

The rationale for the use of PBPK models is that the pharmacokinetics and pharmacodynamics of a chemical each contribute to a chemical's observed toxicity, and specifically, to observed differences among species in sensitivity. Pharmacokinetics describes the absorption, distribution, metabolism, and elimination of chemicals in the body, while pharmacodynamics describes the toxic interaction of the agent with the target cell. In the absence of specific data on their relative contributions to the toxic effects observed in species, each is considered to account for approximately one-half of the variability in observed effects, as is assumed in the development of RfCs and RfDs. The implication of this assumption is that an interspecies uncertainty factor of 3 rather than 10 could be used for deriving an RfD when valid pharmacokinetic data and models can be applied to obtain an oral "human equivalent applied dose" (Jarabek et al., 1990). If specific data exist on the relative contribution of either element to observed effects, that proportion will be used.

(h) Consideration of Linearity (or Lack of a Threshold) for Noncarcinogenic Chemicals. It is quite possible that there are chemicals with noncarcinogenic endpoints that have no threshold exposure level. For example, it appears that, after skin sensitization occurs from exposure to nickel, there is no apparent threshold in subpopulations of hypersensitive individuals for subsequent dermal effects of the chemical. Other examples could include genotoxic teratogens and germline mutagens. Genotoxic teratogens act by causing mutational events during organogenesis, histogenesis, or other stages of development. Germline mutagens interact with germ cells to produce mutations which may be transmitted to the zygote and expressed

during one or more stages of development. However, there are few chemicals which currently have sufficient mechanistic information about these possible modes of action. It should be recognized that although a mode of action consistent with linearity is possible (especially for agents known to be mutagenic), this has yet to be reasonably demonstrated for most toxic endpoints other than cancer.

EPA has recognized the potential for nonthreshold noncarcinogenic endpoints and discussed this issue in the Guidelines for Developmental Toxicity Risk Assessment (USEPA, 1991a) and in the 1986 Guidelines for Mutagenicity Risk Assessment (USEPA, 1986). An awareness of the potential for such teratogenic/mutagenic effects should be established in order to deal with such data. However, without adequate data to support a genetic or mutational basis for developmental or reproductive effects, the default becomes an uncertainty factor or mechanism of action approach, which are procedures utilized for noncarcinogens assumed to have a threshold. Therefore, genotoxic teratogens and germline mutagens should be considered an exception while the traditional uncertainty factor approach is the general rule for calculating criteria or values for chemicals demonstrating developmental/reproductive effects. For the exceptional cases, since there is no well-established mechanism for calculating criteria protective of human health from the effects of these agents, criteria will be established on a case-by-case basis. Other types of nonthreshold noncarcinogens must also be handled on a case-by-case basis.

(i) Minimum Data Requirements. For details on minimum data requirements related to RfD development, see the TSD.

4. SAB Comments

The SAB commented that the BMD approach, and other approaches, have strengths and weaknesses. As described previously, these approaches permit use of more of the entire data base, derive a number that is independent of dose spacing, and can be applied in a manner that reflects the quality of the data. The SAB counseled against using a low BMD (e.g., ED_{01}) that is outside the dose range able to be detected by current toxicological methodology. The SAB further mentioned that the "threshold" for a noncancer effect must be considered when using these approaches. EPA does not disagree with the SAB comments on the BMD and other new approaches for dose-response evaluation. The AWQC Methodology allows for using the benchmark, categorical regression or traditional approach (i.e., NOAEL/LOAEL) in deriving an RfD. This allows for flexibility in choosing the approach that best suits the data. In most cases, the concept of a threshold will be intrinsic to the risk characterization for noncarcinogens. However, as pointed out in Section B.3(h), there are some toxins (such as lead) that appear to have no threshold.

The SAB has expressed the opinion that few data demonstrate that the precision of the RfD derivation process is "an order of magnitude" and mentioned that the precision of each RfD is specific for that RfD. The SAB also questions the application of the term "precision" in this case, because of the difficulty in evaluating the precision of a particular RfD. In responding to comments, EPA attempted to remove terminology that implied that there was an order of magnitude in the precision of the RfD but still allowed for choosing a value other than the point estimate of the RfD in establishing the AWQC. The acceptable range around the RfD has been tied to the uncertainty in the data, rather than any assessment of the analytical precision or accuracy of the calculation. The word precision is still used in the text, but, hopefully, in a context that implies a general rather than analytical meaning.

The SAB concurs that the severity of effect should be considered during the RfD derivation and verification process. However, the SAB has expressed concern about the type of scale that would be used to rate the level of severity. SAB suggests that a severity scale could be based on whether the effect is reversible or if it is irreversible and cumulative. Another possible construct could consider whether the effect is an overt pathology, functional deficit, adverse biochemical change, or a biochemical change of unknown consequence. Finally, a severity scale could be developed based on consideration of target organ affected. The SAB commented that the second type of scale is likely to have greatest applicability to noncancer effects, and would require that biochemical effects be specifically related to functional changes and/or to overt pathology. The SAB expressed skepticism about scales based on relative value given to target organ systems. EPA agrees that it is difficult to develop a simple scale for expressing the severity of an effect. Such a judgment is best left to experienced toxicologists. References for guidelines to consider in evaluating the seriousness of effects are included in the TSD as resource information for the reader.

The SAB has expressed the opinion that, as a rule, less-than-90-day studies are not adequate for RfD derivation, and cited the danger of false-negative studies. It believes that RfDs derived in this manner should be labeled as "temporary" or "interim." However, as demonstrated above, each case must be considered individually. The AWQC guidelines are in agreement with SAB regarding the use of data from studies of less than 90-day duration, but point out that there are circumstances (such as occurrence of a critical acute effect or a developmental RfD) where data from durations of less than 90-days are used.

The SAB believes that PBPK modeling is useful for RfD derivation but needs to be based on understanding the mechanisms of toxicity. EPA is in general agreement with the SAB's opinions about the limitations on the use of PBPK data, and require that pharmacokinetic models be verified and understood before they are used. This implies that there is an understanding of the pharmacodynamic interactions of the toxic agent with a target cell.

5. Request for Comments

1. EPA requests comment on the application of the NOAEL-UF, BMD, Categorical Regression, and other approaches to derive RfDs in support of the derivation of AWQC for the protection of human health.

2. EPA requests comment on the issue of permitting the use of a point within the RfD range for deriving the AWQC, rather than a single point estimate. It must be emphasized that appropriate scientific justification must be given when using any number other than the point estimate RfD. EPA requests comment on how to develop the RfD range and how to determine which point estimate in the range is appropriate.

3. EPA requests comment on approaches to incorporate severity of effect in deriving the RfD.

4. EPA requests comment on the use of less-than-90-day studies to derive RfDs.

5. EPA requests comment on the use of reproductive/developmental, immunotoxicity, and neurotoxicity data as the basis for deriving RfDs.

6. EPA requests comment on the use of PBPK data in deriving an RfD.

7. EPA requests comment on allowing, on a case-by-case basis, consideration of a nonthreshold mode of action for certain chemicals that cause noncancer effects when deriving RfDs.

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C. Exposure

As discussed in the Introduction, the derivation of AWQC for the protection of human health requires information about both the toxicological endpoints of concern for water pollutants and the pathways of human exposure to those pollutants. Historically, two primary pathways of human exposure to pollutants present in a particular ambient waterbody have been considered in deriving AWQC: direct ingestion and other exposure from household uses (e.g., showering) of drinking water obtained from that waterbody, and the consumption of fish/shellfish indigenous to that waterbody. A third pathway that has also been of concern in some circumstances is incidental ingestion of ambient water in conjunction with recreational uses. The derivation of an ambient water quality criterion for a pollutant entails the calculation of the maximum water concentration of that pollutant which ensures that drinking water exposures and/or fish consumption, as well as incidental ingestion, do not result in human intake of that pollutant in amounts that exceed a specified level based upon the toxicological endpoint of concern.

There are many exposure topics and issues involved in the derivation of

AWQC. The first category includes several broad policy issues concerning the major objectives that the Agency believes should be met in setting AWQC. These issues include the following:

■ Specifying which sources of exposure associated with ambient water should be explicitly included in the derivation of AWQC (e.g., Should drinking water be included in AWQC given that there may be separate national drinking water standards? Should AWQC be separate for drinking water exposure and fish consumption, or should they reflect combined exposure potential? Should there be an AWQC based on incidental water ingestion?)

■ Identifying which segment or subgroup of the population AWQC should be designed to protect (e.g., Should the derivation be based on providing protection for individuals having average or "typical" exposures? Should it be based on protecting highly exposed individuals, or most sensitive individuals?)

The second category includes determining whether nonwater sources of exposure (e.g., dietary, inhalation) should also be explicitly considered in the derivation of AWQC. (i.e., Should they be included when setting AWQC based on carcinogenicity as the toxicological endpoint? Should they be considered when setting AWQC based on an RfD for a noncarcinogenic endpoint? What specific procedures should be followed to account for the nonwater sources?)

The third category of issues involves those that mainly address the selection of specific values for the exposure factors included in the AWQC derivation algorithms and which (for the most part) involve considerations independent of the particular method or procedure selected for deriving the criterion. These include such considerations as drinking water consumption rates, fish ingestion rates, and human body weight.

The following sections present exposure issues relevant to the Draft AWQC Methodology Revisions, organized according to the three topics introduced above: policy issues are presented first, followed by the consideration of nonwater sources of exposure, and finally the factors used in AWQC computation. In relevant sections, comments provided from the SAB in its August 1993 review of the AWQC methodology are presented and discussed.

The TSD presents suggested sources of contaminant concentration and exposure intake information, in addition to some suggestions of survey methods for obtaining and analyzing exposure data, necessary for setting AWQC. The following topics are also addressed in the TSD accompanying this Notice regarding exposure assessments for the AWQC: evaluating available exposure data; describing highly exposed subpopulations; distinguishing between major and minor exposure sources; comparing exposures to RfD values; addressing uncertainty and variability of the estimate; the question of current and future uses of the chemical; considering chemical and physical properties; and addressing unquantifiable exposures via an allocation ceiling.

1. Policy Issues

The following discussions are qualitative in nature and are discussed in greater detail in Section C.3., Factors Used in the AWQC Computation.

(a) Identifying the Population Subgroup that the AWQC Should Protect. The AWQC criteria are derived to establish ambient concentrations of chemicals which, if not exceeded, will protect the general population from adverse health impacts from that chemical due to consumption of aquatic organisms and water, including incidental water consumption related to recreational activities. For each chemical, chronic criteria are derived to reflect long-term consumption of food and water. An important decision to make when setting AWQC is the choice of the particular population to protect. For instance, the criteria might be set to protect those individuals who have average or "typical" exposures, or the criteria could be set so that they offer greater protection to those individuals who are more highly exposed (e.g., subsistence fishers). EPA has selected default assumptions that are representative of the defined populations being addressed. These defined populations are: adults in the general population; sport (recreational) fishers; subsistence fishers; women of childbearing age (defined as ages 15–44); and children. In deciding on default assumptions, EPA is aware that multiple assumptions are used in combination (e.g., intake rate and body weight). In the section on the exposure factors used in the AWQC computations, EPA describes the populations that are represented by the different exposure intake assumptions. EPA recommends that priority should be given to identifying and adequately protecting the most highly exposed population. In carrying out regulatory actions under its statutory authorities, including the CWA, EPA's risk management goal is to establish criteria that are protective of human health and generally views that an upper-bound incremental cancer risk in the range of 10^{-5} to 10^{-6} achieves this goal. EPA also considers that the goal is satisfied if the population as a whole will be adequately protected by human health criteria when the criteria are met in ambient water. As stated previously in Appendix II, Section A, EPA is proposing criteria at the 10^{-6} risk level. However, States and Tribes should have the flexibility to develop criteria, on a site-specific basis, that provides additional protection appropriate for highly exposed populations. EPA understands that highly exposed populations may be widely distributed geographically throughout a given State and Tribal area. Thus, if the State or Tribe determines that a highly exposed population would not be adequately protected by criteria based on the general population, EPA recommends that the State/Tribe adopt more stringent criteria. Furthermore, EPA recommends that States and Tribes ensure that the most highly exposed populations not exceed a risk level of 10^{-4}. EPA acknowledges that at any given risk level for the general population, those segments of the population that are more highly exposed face a higher relative risk. For example, if fish are contaminated at a level permitted by criteria that are derived based on a risk level of 10^{-6}, individuals consuming up to 10 times the assumed fish consumption rate would still be protected at a 10^{-5} risk level.

For RfD-based chemicals, EPA's policy is that, in general, the RfD should not be exceeded (see discussion in Section B.3.b on the RfD range) and that the exposure assumptions used should reflect the population of concern. It is recommended that when setting waterbody-specific AWQC, States and Tribes should consider the populations most exposed via water and fish.

(b) Appropriateness of Including the Drinking Water Pathway in AWQC. Under the 1980 AWQC National Guidelines, the derivation of AWQC for the protection of human health accounted for potential human exposure via both consumption of drinking water and ingestion of fish. During the 1992 Workshop, there was discussion regarding the need to include drinking water consumption as a factor in calculating AWQC for surface waters. The principal argument presented against the explicit inclusion of drinking water consumption is that most drinking water, and almost all drinking water obtained from surface water sources, is treated prior to its distribution to consumers. That is, the

direct ingestion of untreated ambient water is extremely rare and, therefore, direct ingestion of water should only be taken into account in setting AWQC when it is a significant route of exposure for a population of concern. However, the majority opinion from the 1992 workshop was that direct ingestion is relevant to the AWQC (for the reasons stated below).

EPA recommends continuing to include the drinking water exposure pathway explicitly in deriving AWQC for the protection of human health where drinking water is a designated use, for the following reasons: (1) drinking water is a designated use for surface waters under the CWA and, therefore, criteria are needed to assure that this designated use can be maintained; (2) although rare, there are some public water supplies that provide drinking water from surface water sources without treatment; (3) even among the majority of water supplies that do treat surface waters, existing treatments may not necessarily be effective for reducing levels of particular contaminants; (4) in consideration of the Agency's goals of pollution prevention, ambient waters should not be contaminated to a level where the burden of achieving health objectives is shifted away from those responsible for pollutant discharges and placed on downstream users to bear the costs of upgraded or supplemental water treatment.

(c) Relationship Between Human Health AWQC and Drinking Water Standards. In conjunction with the preceding issue, EPA has also given consideration to whether there should be an equivalency between the drinking water component of AWQC and either MCLGs or MCLs promulgated under the SDWA.

Under the SDWA, MCLGs are established as health-based goals without explicit consideration of either the costs or technological feasibility of achieving those goals. MCLs are then set as close to the MCLGs as possible, taking costs of the drinking water treatment technologies and the availability of analytical methodologies into account. Because MCLs are based in part on cost and technology considerations, they are not considered counterparts to AWQC for the protection of human health. As strictly health-based goals, however, MCLGs and AWQC for the protection of human health are highly analogous. There are some states that have utilized MCLGs as human health water quality criteria under the CWA.

The application of the health goals set under the SDWA is quite different from the application of goals set under the CWA. Under the SDWA, the MCLGs (and MCLs) apply to the chemical concentration in distributed tap water, whereas under the CWA, AWQC are used to develop State or Tribal standards, which are then used with water transport models to derive permit limits for point source discharges. Because the water transport model uses protective assumptions which provide a margin of safety (such as 30-year, low-flow rates), it is generally unlikely that the water column concentration will be as high as the AWQC concentration limit for an extended period of time.

In some cases, MCLs or MCLGs are more stringent than AWQC. In other cases, AWQC are more stringent than the drinking water MCLs or MCLGs. The reason is that the methodology used for deriving drinking water levels is different than the methodology used for deriving AWQC. Although both methods predominantly use the same reference dose or cancer risk assessment, and both methods assume a 70 kg adult and consumption of 2 liters of water per day, there are several important risk management differences. One difference is that MCLGs for chemicals that are known or likely carcinogens have usually been set equal to zero, while AWQC for carcinogens are based on an incremental cancer risk level. For chemicals with limited evidence of carcinogenicity (classified as C, possible carcinogen, under the 1986 Cancer Guidelines), the MCLG is usually based on the chemical's reference dose for noncancer effects with the application of an additional uncertainty factor of 1 to 10 to account for its possible carcinogenicity. The 1980 AWQC guidelines do not differentiate among carcinogens with respect to the weight-of-evidence grouping; all were derived based on lifetime carcinogenic risk levels. Another difference is that a single determined risk value (i.e., within the range of 10^{-4} to 10^{-6}) is selected in setting risk-based MCLs, while AWQC have been derived by providing incremental risk levels spanning 10^{-5} to 10^{-7} (i.e., three values were presented). Different numerical values between the two may also be due to the information that each criterion is based on at the time of development. That is, criteria developed at different times for the same chemical may be based on different exposure data and, perhaps, different toxicity studies. However, the principal difference is in the approach to accounting for exposure sources, including the fact that AWQC are based on a prediction of exposure from fish and shellfish using a bioaccumulation factor for the individual chemical and a fish/shellfish consumption rate. With the current MCLG methodology, bioaccumulation factors have not been used in the exposure estimates and fish/shellfish consumption rates have not been fully accounted for. Additionally, MCLGs for RfD-based chemicals developed under the SDWA follow a relative source contribution (RSC) approach in which the percentage of exposure that is attributed to drinking water is determined relative to the total exposure from all sources (e.g., drinking water, food, air). The rationale for this approach is to ensure that an individual's total exposure to a chemical does not exceed the RfD. Although the 1980 AWQC guidelines recommended taking non-fish dietary sources and inhalation into account, data on these other sources were generally not available. Therefore, it was typically assumed that an individual's total exposure to a chemical came solely from drinking water from the water body and consumption of fish and shellfish living in the water body. Lastly, as stated previously, when an MCL is adjusted based on cost or availability of treatment technology or analytical methods, then the MCL may become much less stringent than the AWQC, regardless of the exposure assumptions or toxicological basis.

The SAB, in its 1993 review of EPA's preliminary recommendations, commented that there would be difficulties in using the concept of drinking water MCLGs for setting AWQC. The SAB was concerned about the possible introduction of the zero MCLG concept into the methodology for deriving AWQC. The SAB was also concerned that AWQC are considerably different from MCLGs, and that developing AWQC that are different from MCLGs may be reasonable in certain specific cases (e.g., for disinfectant byproducts). EPA's proposed methodology addresses the specific concerns that the SAB has raised regarding the incorporation of the zero MCLG concept.

The Agency believes that for a given pollutant, the drinking water component of an AWQC should be consistent with the MCLG that has been established for that substance (if one has been developed) and, therefore, proposes to use similar assessment methodologies for deriving AWQC and MCLGs. EPA stated its policy on the use of Section 304(a) human health criteria (i.e., the AWQC) versus MCLs in 45 FR 79318, November 28, 1980. Additionally, a memorandum from R. Hanmer to the Regional Water

Management Division Directors dated December 12, 1988, provided detailed guidance with regard to this policy. Specifically, for the protection of public water supplies, EPA encouraged the use of MCLs. When fish ingestion is considered an important activity, EPA recommended the use of AWQC to protect human health. In all cases, if an AWQC did not exist for a chemical, an MCL was deemed a suitable level of protection. EPA is now recommending a slightly different approach. Although the use of MCLs is acceptable in the absence of 304(a) criteria, EPA is recommending that MCLs only be used when they are numerically the same as the MCLG and only when the sole concern is the protection of public water supply sources and not the protection of the CWA section 101(a) goal regarding fish consumption (e.g., where the chemically toxic form in water is not the form found in fish tissue and, therefore, fish ingestion exposure is not an issue of concern). Where consideration of available treatment technology, costs, or availability of analytical methodologies has resulted in MCLs that are less protective than MCLGs or AWQC, States and Tribes should consider using MCLGs and/or health-based AWQC to protect water uses. Where fish consumption is an existing or potential activity, States and Tribes should ensure that their adopted human health criteria adequately address this exposure route. When fish consumption is a use, EPA recommends development of AWQC due to the fact that fish consumption and bioaccumulation are explicitly addressed. In all cases, AWQC should be set to ensure that all routes of exposure have been considered. EPA believes if water monitored at existing drinking water intakes has concentrations at or below MCLGs, then the water could be considered to meet a designated use under the CWA as a drinking water supply. In situations where a 304(a) criterion was less protective than an MCL, it is advisable to use the MCL as the criterion for segments designated as drinking water supplies. For carcinogens where the MCLG is equal to zero, States are encouraged to base an AWQC at the drinking water intake on an acceptable cancer risk level (i.e., a level within the range of 10^{-4} to 10^{-6}), to promote pollution prevention and anti-degradation.

(d) Setting Separate AWQC for Drinking Water and Fish Consumption. In conjunction with the issue of the appropriateness of including the drinking water pathway explicitly in the derivation of AWQC for the protection of human health, there has been discussion of whether these AWQC should be single values that account for potential exposure from drinking water and fish consumption together, or whether it is more appropriate to calculate separate AWQC explicitly for each pathway. One of the factors considered has been that setting separate criteria could provide a more straightforward means of developing AWQC for the drinking water pathway that would be consistent with MCLG development.

The 1980 AWQC National Guidelines used the approach of setting a single AWQC accounting for both drinking water and fish consumption, as well as a separate AWQC based on ingestion of aquatic organisms alone. This latter criterion was intended to apply in those cases where the designated uses of a waterbody include supporting fish or shellfish for human consumption, but not as a drinking water supply source (e.g., non-potable estuarine waters).

Although the SAB recommended the use of separate criteria based on fish intake and water consumption, in the revised methodology, the Agency is recommending continuing the practice of setting AWQC that account for combined drinking water and fish consumption, as well as a separate criterion for fish/shellfish consumption alone. The reason for this is because most State and Tribal programs designate their waters to cover both uses.

(e) Incidental Ingestion from Ambient Surface Waters. The 1980 AWQC National Guidelines did not include criteria to address incidental ingestion from recreational uses. As noted previously, there are cases where AWQC for the protection of human health do not include consideration of the waterbody as a source of potable water (e.g., estuaries). In these cases, criteria based only on fish ingestion (or aquatic life criteria) may not adequately protect recreational users from health effects resulting from incidental ingestion. In order to protect recreational users, EPA recommends including exposure resulting from incidental ingestion of water in those cases where the waterbody is not used for potable water. However, it should be noted that the SAB felt there was not a great need for incidental ingestion criteria for recreational uses where drinking water criteria are inapplicable (e.g., estuaries). The exposure factors section of this document (Appendix II, Section C.3.(c)) discusses incidental ingestion estimates for calculating both chronic and acute ingestion rates.

2. Consideration of Nonwater Sources of Exposure When Setting AWQC

(a) Background. In the 1980 AWQC National Guidelines, different approaches for addressing nonwater exposure pathways were used in setting AWQC for the protection of human health depending upon the toxicological endpoint of concern. For those substances for which the appropriate toxic endpoint was linear carcinogenicity, only the two water sources (i.e., drinking water consumption and fish ingestion) were considered in the derivation of the AWQC. Nonwater sources were not considered explicitly. In the case of linear carcinogens, the AWQC is being determined with respect to the incremental lifetime risk posed by a substance's presence in water, and is not being set with regard to an individual's total risk from all sources of exposure.

In the case of substances for which the AWQC is set on the basis of a nonlinear carcinogen or a noncancer endpoint where a threshold is assumed to exist, nonwater exposures were to be considered when deriving the AWQC under the 1980 AWQC National Guidelines. In effect, the 1980 AWQC National Guidelines specified that the AWQC be calculated to account for no more than that portion of the ADI that remains after contributions from other expected sources of exposure have been subtracted out. The ADI is equivalent to the RfD, which is discussed in Appendix II, Section B of this Notice. The rationale for this approach has been that for pollutants exhibiting threshold effects, the objective of the AWQC is to ensure that an individual's total exposure does not exceed that threshold level.

It is useful to note that while the 1980 AWQC National Guidelines recommended taking non-fish dietary sources and inhalation into account in setting the AWQC for threshold contaminants, in practice the data on these other sources were generally not available and, therefore, the AWQC usually were derived such that they accounted for all of the ADI (RfD). When the 1980 AWQC National Guidelines were published, EPA noted that the inability to estimate intake from non-fish dietary sources and inhalation, as well as the wide variability that may exist in such exposures, would add to the uncertainty in the criteria derivation. EPA also noted in the 1980 AWQC National Guidelines that in terms of scientific validity. the accurate estimate of the ADI (RfD) is the major

factor in the satisfactory derivation of AWQC.

Note: In the drinking water MCLG methodology, noncarcinogenic criteria follow an RSC approach in which the percentage of exposure that is attributed to drinking water is determined relative to the total exposure from all sources (e.g., drinking water, food, air, soil). The rationale for this approach is to ensure that an individual's total exposure to a chemical does not exceed the reference dose.

Given the inability to reasonably predict future changes in exposure patterns, the uncertainties in the exposure estimates due to both data inadequacy and possible unknown sources of exposure, as well as the potential for some populations to experience greater exposures than indicated by the available data, EPA believes that utilizing the entire RfD (or Pdp/SF) may not be adequately protective. Additionally, the uncertainties associated with the derivation of the RfD (or Pdp/SF) (e.g., limitations in the toxicity study, extrapolation from the study species to humans) are independent of the exposure assessment and the associated intake sources and intake uncertainties.

If the AWQC are set so that the RfD or Pdp/SF (or some ceiling value less than either of these) is not exceeded after taking other sources of exposure into account, a procedure to consider the nonwater sources in the derivation of AWQC must be adopted.

As discussed above, the 1980 AWQC National Guidelines did not account for nonwater sources when setting AWQC for those chemicals that were evaluated as carcinogens. The formula for setting the criterion for carcinogens was:

$$C = \frac{[70 \cdot LR]}{\left[q_1^* \cdot (2 + 0.0065R)\right]} \quad \text{(Equation IIIC-1)}$$

Where:
C=The AWQC (mg/L)
70=human body weight (kg)
LR=lifetime cancer risk factor being used to set the criterion, generally in the range of 10^{-5} to 10^{-7}
q_1^*=cancer slope factor in $(mg/kg\text{-}day)^{-1}$
2=drinking water consumption (L/day)
0.0065=fish ingestion (kg/day)
R=bioconcentration factor (L/kg)

As indicated by the above equation, if the lifetime risk value (LR) in the above equation is 10^{-6}, then the value computed for C is the water concentration that would be expected to increase an individual's lifetime risk of carcinogenicity from exposure to the particular pollutant by no more than one chance in one million, regardless of the additional lifetime cancer risk due to exposure, if any, to that particular substance from other sources.

For noncarcinogens for which nonwater exposures were to be considered, however, the 1980 methodology included the following general formula for setting the criterion:

$$C = \frac{[ADI - (DT + IN)]}{[2 + 0.0065R]} \quad \text{(Equation IIIC-2)}$$

Where:
C=The criterion (mg/L)
ADI=Acceptable daily intake (mg), developed as a dose specifically for a 70 kg adult (replaced by the use of Reference Dose (RfD) in units of mg/kg-day, as discussed in Appendix II, Section B of this document)
DT=Non-fish dietary intake (mg/kg-day)
IN=Inhalation intake (mg/kg-day)

The other elements are the same as for the cancer-based formula, above. As indicated by the above equation, the 1980 AWQC National Guidelines used a "subtraction" approach to account for nonwater exposure sources when calculating AWQC for noncarcinogenic, threshold pollutants. That is, the amount of the ADI (RfD) "available" for water sources was determined by first subtracting out contributions from nonwater sources. A similar subtraction approach was used, albeit inconsistently, in the derivation of drinking water MCLG values in the early and mid-1980's; along with a percentage method. More recently, the approach used in the drinking water program has been to determine the MCLGs exclusively by the percentage method. To foster meeting the objective noted earlier of establishing consistency in deriving MCLGs and the drinking water component of AWQC, EPA would like to use the same approach for both MCLGs and AWQC.

There has been some discussion of whether it is, in fact, necessary in most cases to explicitly account for other sources of exposure when computing the AWQC for pollutants exhibiting threshold effects. It has been argued that because of the conservative assumptions generally incorporated in the calculation of reference doses used as the basis for the AWQC derivation, total exposures slightly exceeding the RfD are unlikely to produce adverse effects. It could be argued, therefore, that reducing AWQC by accounting for other exposure sources relative to what they would be if they were derived from the full RfD value provides little or no actual additional risk reduction.

In its report, SAB's Drinking Water Committee did not feel that it is appropriate to develop AWQC geared to ensure that the sum of all theoretically possible exposures never exceeds the RfD by even a small amount. The Committee rejected the routine use of the percentage or subtraction methods for the allocation of the RfD, and the use of default values in the absence of reliable exposure data. They also expressed concern that EPA could "focus intense regulatory attention on insignificant problems, thus wasting scarce resources" if "compensat[ion] for other routes of exposure" was attempted. (For the complete discussion, refer to SAB, 1993.)

Instead, the Committee endorsed the recommendation from the AWQC Workshop held by the Agency in 1992 which calls for bringing together knowledgeable individuals from all the appropriate offices or agencies for discussions when significant contributions to exposure are expected from multiple sources, and the total of those contributions exceeds the RfD. For certain chemicals (e.g., dioxin, mercury), EPA has coordinated efforts throughout the Agency. However, such extensively coordinated efforts may prove to be impractical on a routine basis. It is reasonable that the initially developed assessments and proposed criteria, including proposals for RfD allocation, could be circulated for

comments and input from staff of the appropriate offices or agencies.

However, the SAB also stated that apportionment can be attempted when data are available. When total exposures are below the RfD, SAB suggested that EPA's goal should be to develop criteria "to ensure that a problem does not develop in the future." Yet, they made no specific suggestions on how to achieve this goal. For situations when exposures may exceed the RfD, the SAB stated that "it is unlikely that exposure of any populations to doses slightly over the RfD (even up to twice the RfD) would produce significant health effects." However, they seem to contradict this by advising that "if *total* exposures are at or higher than the RfD, then remedial actions may need to be considered." EPA disagrees with the idea that the conservative way in which the RfD is calculated automatically makes it unlikely that populations would experience "significant health effects" from exposures greater than the RfD. RfDs are not all equivalent in their derivation, and EPA believes multiple route exposures may be particularly important when the uncertainty factors associated with the RfD are small. Furthermore, the opinion that unless "*total* exposures [are] significantly in excess of the RfD, exposure from other routes should be neglected in calculations of AWQC" is counter to strong Agency directives to routinely consider and account for all routes of exposure when setting health-based criteria and with consideration to other regulatory activities. Despite arguments raised by SAB, EPA is recommending that only a portion of the RfD (or Pdp/SF) be used in setting AWQC in order to account for other sources of exposure. EPA is also considering whether toxicity information (such as uncertainty factors, severity of effects, essentiality, possible additive/synergistic effects) should be considered in allocating the RfD or Pdp/SF. While combined exposures above the RfD or Pdp/SF may or may not be an actual health risk, a combination of health criteria exceeding the RfD or Pdp/SF may not be sufficiently protective. Therefore, EPA recommends routinely accounting for all sources and routes of non-occupational exposure when setting AWQC. EPA believes that maintaining total exposure below the RfD (Pdp/SF) is a reasonable health goal and that there are circumstances where health-based criteria for a chemical should not exceed the RfD (Pdp/SF), either alone (if only one criterion is relevant, along with other intake sources considered as background exposures) or in combination.

EPA has considered several alternative approaches to account for nonwater sources and to resolve past inconsistencies in setting criteria. Specifically, the Agency's Relative Source Contribution Policy Workgroup has considered six alternatives:

- Exposure Decision Tree Approach;
- Subtraction Approach;
- Percentage Approach;
- Tiered Approach;
- Safety Factor Approach; and
- Margin of Safety Approach.[14]

The Workgroup discussed, during the series of meetings, the various approaches to evaluating human exposure for regulatory and other risk assessment activities. Each approach has advantages and disadvantages that were discussed at length during these meetings, as do the basic concepts surrounding the subtraction and percentage methods of accounting for relevant exposures when allocating an RfD (Pdp/SF). The other four approaches are variations on the fundamental concepts of the subtraction or the percentage approaches.

Each of these six approaches is discussed in detail in a separate document contained in the public docket for this proposal (Borum, unpublished). The Agency recommends the Exposure Decision Tree Approach as described below. More detailed discussion and an example of how the Exposure Decision Tree is implemented are presented in the TSD.

As will become clear when reading the Exposure Decision Tree Approach, a typical evaluation will likely involve multiple sources/pathways of exposure and may involve more than one health-based criterion (either existing or in consideration for development). The current EPA policy discussions include the potential for applying this approach to other program offices to the extent practicable when conducting exposure assessments. As such, the broader goals are to ensure more comprehensive evaluations of exposure Agencywide and consistent allocations of the RfD (Pdp/SF) for criteria-setting purposes when appropriate.

(b) Exposure Decision Tree Approach. The Exposure Decision Tree approach allows flexibility in the RfD (Pdp/SF) allocation among sources of exposure. When adequate data are available they are used to make accurate exposure predictions for the population(s) of concern. When this is not possible, a series of qualitative alternatives is proposed using less adequate data or default assumptions that allow for the inadequacies of the data while protecting human health. The decision tree allows for use of both subtraction and percentage methods of accounting for other exposures, depending on whether one or more health criterion is relevant for the chemical in question. The subtraction method is considered acceptable when only one criterion is relevant for a particular chemical. In these cases, other sources of exposure can be considered "background" and can be subtracted from the RfD (Pdp/SF). When more than one criterion is relevant to a particular chemical, apportioning the RfD (Pdp/SF) via the percentage method is considered appropriate to ensure that the combination of criteria, and thus the potential for resulting exposures, do not exceed the RfD (Pdp/SF). The decision tree (with numbered boxes) is shown in Figure IIIC–1. The underlying objective is to maintain total exposure below the RfD (Pdp/SF) while avoiding an extremely low limit in a single medium that represents just a fraction of the total exposure. To meet this objective, all proposed numeric limits lie between 80 percent and 20 percent of the RfD (Pdp/SF). EPA recommends use of the decision tree approach but also recognizes that departures from the approach may be appropriate in certain cases. The Agency endorses such action as long as reasons are given as to why it is not appropriate to follow the decision tree approach as long as the steps taken to evaluate the potential sources and levels of exposure are clearly indicated.

The first step in the decision process, problem formulation, is to identify the population(s) of concern (Box 1) and identify the relevant exposure sources and pathways (Box 2). The second step is to identify what data are available and whether they are adequate for calculating exposure estimates (Box 3). The term "data," as used here and discussed throughout the document, refers to ambient sampling data (from Federal, regional, State or area-specific studies) and not internal human exposure measurements. The adequacy of data is a professional judgment for each individual chemical of concern, but EPA recommends that the minimum acceptable data for Box 3 are exposure distributions that can be used to determine, with an acceptable 95 percent confidence interval, the central tendency and high-end exposure levels for each source. Once the two initial steps are complete, the next step

[14] This term refers to a method for accounting for nonwater sources of exposure and should not be confused with the nonlinear cancer assessment approach known as Margin of Exposure.

depends on the type and quantity of data available.

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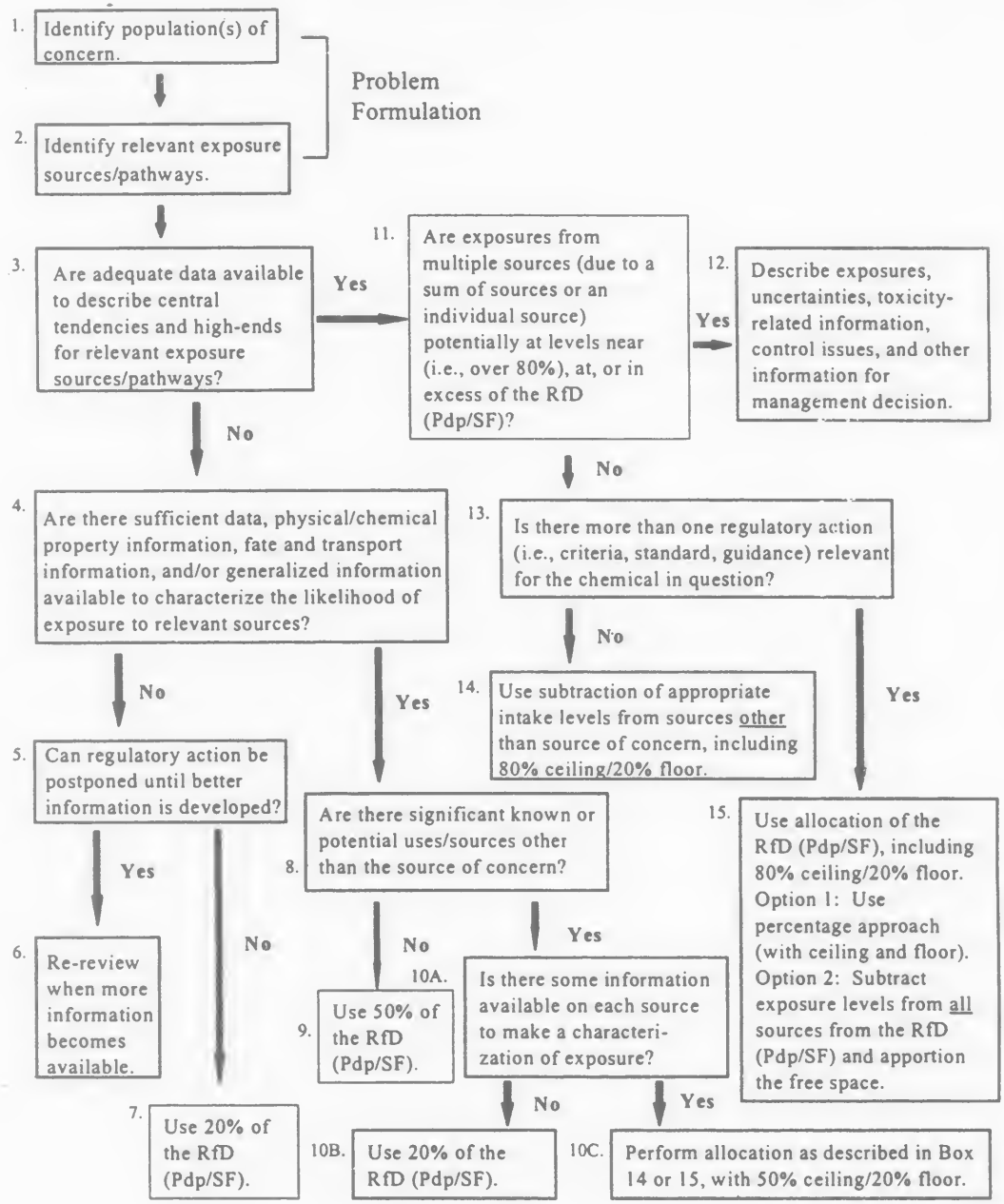
Figure IIIC-1

Exposure Decision Tree for Defining Proposed RfD (Pdp/SF) Allocation



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If adequate data are available to describe the central tendencies and high-end levels from each exposure source/pathway, the levels of exposure are compared to the RfD or Pdp/SF (Box 11). If the levels of exposure for the chemical in question are not near (currently defined as greater than 80 percent), at, or in excess of the RfD (Pdp/SF), then a determination is made (Box 13) as to whether there is more than one regulatory action relevant for the given chemical (i.e., more than one criterion, standard or other guidance being planned, performed or in existence for the chemical).

If the action under consideration is the sole action (i.e., multiple criteria, etc. are not relevant), then the recommended method for setting a health-based criterion is to use a subtraction calculation (Box 14). The criterion is the result after the appropriate intake levels from all other sources have been subtracted from the RfD (Pdp/SF). In addition, there is a ceiling on the amount of the RfD (Pdp/SF) available for allocation. This ceiling, 80 percent of the RfD (Pdp/SF), is to provide adequate protection for individuals whose total exposure to a contaminant is, due to any of the exposure sources, higher than currently indicated by the available data. This also increases the margin of safety to account for possible unknown sources of exposure. There is also a floor of 20 percent to prevent a *de minimis* exposure allocation in a particular medium.

If more than one regulatory action is relevant (as described above), then the recommended method for setting health-based criteria is to allocate the RfD (Pdp/SF) among those sources for which health-based criteria are being set (Box 15). Two main options for allocating the RfD (Pdp/SF) are presented in this Box. Option 1 for allocation is the percentage approach (with a ceiling and floor). This option simply refers to the percentage of overall exposure contributed by an individual exposure source. That is, if for a particular chemical, drinking water were to represent half of total exposure and diet were to represent the other half, then the drinking water contribution (known as the "relative source contribution" or RSC) would be 50 percent. The health-based criterion would, in turn, be set at 50 percent of the RfD (Pdp/SF).

This option also uses an appropriate combination of intake values for each exposure source based on the variability in occurrence levels and determined on a case-by-case basis. Option 2 would involve subtracting from the RfD (Pdp/SF) the exposure levels from all sources of exposure and apportioning the free space among those sources for which health-based criteria are being set. There are several ways to do this: (1) Divide the free space among the sources with preference given to the source likely to need the most increase (e.g., because of intentional uses or because of physical/chemical properties like solubility in water, etc.); (2) Divide the free space in proportion to the "base" amount used (e.g., the source accounting for 60 percent of exposure gets 60 percent of the free space—this is identical to the percentage method; the outcome is the same); and (3) Divide the free space based on current variability of exposure from each source (i.e., such that more free space is allocated to the source that varies the most). The resulting criterion would then be equal to the amount of free space allocated plus the amount subtracted for that source.

If the levels of exposure for the chemical in question are near (again, currently defined as greater than 80 percent), at, or in excess of the RfD (Pdp/SF), then the estimates of exposures and related uncertainties, potential allocations, toxicity-related information, control issues, and other information will be presented to managers for a decision (Box 12). The high levels referred to in Box 11 may be due to a single dominant source or to a combination of sources. The estimates of exposure performed in these instances and any allocations made would be done as described above for Boxes 13, 14, and 15. However, because exposures that approach or exceed the RfD (Pdp/SF) and the feasibility of controlling different sources of exposure are complicated issues, risk managers will need to be directly involved in formulating any allocation decisions.

If the data fail the adequacy test (Box 3), any limited data that are available are evaluated (Box 4). This includes information about the chemical/physical properties, uses, environmental fate and transformation, limited sampling data that did not fulfill the requirements of Box 3, as well as any other information that would characterize the likelihood of exposure from various media for the chemical and aid in making a qualitative determination regarding the relation of one exposure source to another. Because these data are less certain (i.e., include information that does not directly measure exposure, or very limited data), criteria based on this information should be more conservative as shown in the remainder of the decision tree.

If there are not sufficient data/information to give any characterization of exposure, then it may be best to defer action on the chemical until better information becomes available (Boxes 5 & 6). If this is not possible, then the "default" assumption of 20 percent of the RfD or Pdp/SF (Box 7) should be used, which has been used in past Agency water program regulations.

If there are sufficient data to give a characterization of exposure, the RfD (Pdp/SF) allocation depends on whether there are other known or potential uses or sources of concern (Box 8). If the source of concern is the sole source then EPA recommends an allocation of 50 percent of the RfD or Pdp/SF (Box 9). If there are multiple sources of concern and some information is available on each (Box 10A), the procedure, as shown in Box 10C, is the same as that in Box 14 or Box 15 depending on whether one or more criterion is relevant, but with a 50 percent ceiling to account for uncertainties from the limited amount of data (compared to Box 3). As with Box 11, if a determination is made in Box 10A (i.e., if information is available) that exposures are near, at or above the RfD (or Pdp/SF) based on the available information, the allocations made need to be presented to risk managers for decision. If information is lacking on some of the multiple exposure sources then EPA would use an allocation of 20 percent of the RfD or Pdp/SF (Box 10B).

(c) Quantification of Exposure. When selecting contaminant concentration values in environmental media and exposure intake values for the Relative Source Contribution (RSC) analysis, it is important to realize that each value selected (including those intakes recommended as default assumptions in the AWQC equation) is associated with a distribution of values for that parameter. Determining how various subgroups fall within the distributions of overall exposure and how the combination of exposure variables defines what population is being protected is a complicated and, perhaps, unmanageable task, depending on the amount of information available on each exposure factor included. Many times, the default assumptions used in EPA risk assessments are derived from the evaluation of numerous studies and are generally considered to represent a particular population group or some national average. Therefore, describing with certainty the exact percentile of a particular population that is protected with a resulting criteria is often not possible.

General recommendations for selecting values to be used in exposure assessments for both individual and population exposures are discussed in

EPA's Guidelines for Exposure Assessment (USEPA 1992). The ultimate choice of the contaminant concentration values used in the RSC estimate and the exposure intake rates requires the use of professional judgment. This is discussed in greater detail in the TSD (Section 2.3.3).

(d) Inclusion of Inhalation and Dermal Exposures From Household Drinking Water Uses. A number of drinking water contaminants are volatile and thus diffuse from water into the air where they may be inhaled. In addition, drinking water is used for bathing and, thus, there is at least the possibility that some contaminants in water may be dermally absorbed.

Volatilization may increase exposure via inhalation and decrease exposure via ingestion and dermal absorption. The net effect of volatilization and dermal absorption upon total exposure to volatile drinking water contaminants is unclear. Although several approaches can be found in the literature, including various models that have been used by EPA, the Agency currently does not have a recommended methodology for explicitly incorporating inhalation (i.e., from volatilization) and dermal absorption exposures from household water uses in the derivation of health-based criteria. However, the Agency is supporting research in this area.

(e) Inclusion of Inhalation Exposures in RSC Analysis. The type and magnitude of toxicity produced may differ between routes; that is, the route of exposure can impact the effective concentration of a chemical and can also change the toxicity. For example, an inhaled chemical such as hydrogen fluoride may produce local effects upon the lung that are not observed (or only observed at much higher doses) when the chemical is administered orally. Also, the active form of a chemical (and principal toxicity) can be the parent compound and/or one or more metabolites. With this Methodology, EPA recommends that differences in absorption and toxicity by different routes of exposure be determined and converted to reflect the differences in bioavailability and applied to the exposure assessment. EPA acknowledges that the issue of whether the doses received from inhalation and ingestion exposures are cumulative (i.e., toward the same threshold of toxicity) is complicated. Such a determination involves evaluating the chemical's physical characteristics, speciation and reactivity. A chemical may also exhibit different metabolism by inhalation versus oral exposure and may not typically be metabolized by all tissues. In addition, a metabolite may be much more or much less toxic than the parent compound. Certainly with a systemic effect, if the chemical enters the bloodstream, then there is some likelihood to contact the same target organ. Attention also needs to be given to the fact that both the RfD and RfC are derived based on the administered level. Toxicologists generally believe that the effective concentration of the active form of a chemical(s) at the site(s) of action determines the toxicity. If specific differences between routes of exposure are not known, it may be reasonable to assume that the internal concentration at the site from any route contributes as much to the same effect as any other route. A default of assuming equal absorption has often been used. However, for many of the chemicals that the Agency has reviewed, there is a substantial amount of information already known to determine differences in rates of absorption. For example, absorption, in part, is a function of blood solubility (i.e., Henry's Constant) and better estimations than the default can be made.

The RSC analyses that accompany these proposed Methodology revisions include consideration of inhalation exposures. Comment is requested on whether this is a reasonable approach to accounting for exposures for setting AWQC. Even if different target organs are involved between different routes of exposure, a conservative policy may be appropriate to keep all exposures below a certain level. One suggestion is to set allowable levels (via an equation) such that the total of ingestion exposures over the ingestion RfD in addition to the total of inhalation exposures over the inhalation RfC is not greater than 1 (Note: the RfD is typically presented in mg/kg-day and the RfC is in mg/m^3).

(f) Bioavailability of Substances from Different Routes of Exposure. For many chemicals, the rate of absorption can differ substantially from ingestion compared to inhalation. There is also available information for some chemicals which demonstrates appreciable differences in gastrointestinal absorption depending on whether the chemical is ingested from water, soil, or food. For some contaminants, plant and animal food products may also have appreciably different absorption rates. Regardless of the allocation approach used, EPA recommends using existing data on differences in bioavailability between water, air, soils, and different foods when estimating total exposure for use in allocating the RfD or Pdp/SF. The Agency has developed such exposure estimates for cadmium (USEPA, 1994). In the absence of data, EPA will assume equal rates of absorption from different routes and sources of exposure.

(g) Consideration of Non-water Exposure Procedures for Noncarcinogens, Linear Carcinogens, and Nonlinear Carcinogens. In the revised methodology, EPA recommends continuing to use the incremental risk approach that does not consider other exposure sources explicitly when setting AWQC for linear carcinogens. EPA recommends continuing to consider other exposure sources in setting AWQC for threshold toxicants, including both noncarcinogens and nonlinear carcinogens. Nonlinear carcinogens are discussed in detail in Appendix II, Section A.

3. Factors Used in the AWQC Computation

This section presents values for several exposure factors that are currently used in the derivation of AWQC. A new factor being considered by EPA, incidental ingestion from surface water, is also discussed in this Section, with a suggested default value.

When choosing exposure factors to include in the derivation of a criterion for a given pollutant, EPA recommends considering exposure factors relevant to populations that are most susceptible to that pollutant. In addition, highly exposed individuals should be considered when setting criteria. In general, exposure factors specific to adults and relevant to lifetime exposures are the most appropriate exposure factors to consider when determining criteria to protect against effects from long-term exposure. However, infants and children have a higher rate of water and food consumption per body weight compared to adults and also may be more susceptible to some pollutants than adults (USEPA, 1997c). In addition, exposure by pregnant women to certain toxic chemicals may cause developmental effects in the fetus (USEPA, 1997c). Exposures resulting in developmental effects may be of concern for some contaminants and should be considered along with data applicable to long-term health effects when setting AWQC. (See Section B for further discussion of this issue.) Short-term exposure may include multiple or continuous exposures occurring over a week or so. Exposure factors relevant for considering chronic toxicity as well as exposure factors relevant for short-term developmental exposure concerns that could result in adverse health effects are discussed in the Sections below. States and Tribes may choose to develop criteria for developmental health effects

based on exposure factors specific to children or to women of childbearing age.

EPA believes that the recommended exposure factor default intakes for adults with chronic exposure situations are adequately protective of the population over a lifetime. In providing additional exposure intake factors for women of childbearing age and children, EPA is providing flexibility for States and Tribes to establish criteria specifically targeted to provide additional protection to sensitive subpopulations (e.g., pregnant/nursing women, infants, children) or highly exposed subpopulations (e.g., sport anglers, subsistence fishers) using adjusted values for exposure parameters for body weight, drinking water intake, and fish consumption.

Each of the following Sections recommends exposure parameters for use in developing AWQC. These are based on both science policy decisions that consider the best available data, as well as risk management judgments regarding the overall protection afforded by their choice in the derivation of AWQC.

(a) Human Body Weight Values for Dose Calculations.

(1) Rate Protective of Human Health from Chronic Exposure. The 1980 AWQC National Guidelines assumed a body weight of 70 kg for derivation of AWQC. EPA recommends maintaining the default body weight of 70 kg for calculating AWQC as a representative average value for both male and female adults. As stated above, exposure factors specific to adults are recommended to protect against effects from long-term exposure. This value is based on the following information. In an analysis of the NHANES II (the second National Health and Nutrition Examination Survey) data base, the 10th, 25th, and 50th percentile values for female adults 18–74 years old are 50.3, 55.4, and 62.4 kg, respectively (adapted from NCHS, 1987). For males in the same age range the comparable percentile values are 62.3, 68.7, and 76.9 kg, respectively. The mean body weight value for men and women ages 18 to 75 years old from this survey is 71.8 kg (adapted from NCHS, 1987). The mean value for body weight for adults ages 20–64 years old from another survey which primarily measured drinking water intake is 70.5 kg (Ershow and Cantor, 1989). The revised EPA Exposure Factors Handbook (USEPA 1997a) recommends 71.8 kg for adults, based on the NHANES II data. However, the Handbook also acknowledges the 70 kg value commonly used in EPA risk assessments and cautions assessors on the use of values other than 70 kg. Specifically, the point is made that the 70 kg value is used in the derivation of cancer slope factors and unit risks that appear in IRIS. Consistency is advocated between the dose-response relationship and exposure factors assumed.

(2) Rates Protective of Developmental Human Health Effects. As noted above, pregnant women may represent a more appropriate population for which to assess exposure from chemicals in ambient waters in some cases, because of the potential for developmental effects in fetuses. In these cases, body weights representative of women of childbearing age may be appropriate to adequately protect offspring from such health effects. To determine a mean body weight value appropriate to this population, separate body weight values for women in individual age groups within the range of 15–44 years old, taken from NHANES II (NCHS, 1987), were combined and weighted by current population percentages (U.S. Bureau of the Census, 1996) to obtain a value applicable to the current population. The resulting mean body weight value is 63.8 kg. Ershow and Cantor (1989) present body weight values specifically for pregnant women included in the survey; mean and median weights are 65.8 and 64.4 kilograms, respectively. Ershow and Cantor (1989), however, do not indicate the ages of these pregnant women. Based on this information for women of childbearing age and pregnant women, States may wish to use the mean body weight value of 65 kg in cases where pregnant women are the specific population of concern and the chemical of concern exhibits reproductive and/or developmental effects (i.e., the critical effect upon which the RfD or Pdp/SF is based). Using the 65 kg assumption would result in lower (more protective) criteria than criteria based on 70 kg.

As discussed earlier, because infants and children have a higher rate of water and food consumption per body weight compared to adults, a higher intake rate per body weight factor may be needed when comparing estimated exposure doses with critical doses when RfDs are based on health effects in children. To calculate these intake rates relevant to such effects, the body weight of children should be used. As with the default body weight for pregnant women, EPA is not recommending the development of additional AWQC (i.e., similar to drinking water health advisories) that focus on acute or short-term effects since these are not seen routinely as having a meaningful role in the water quality criteria and standards program. However, there may be circumstances where the consideration of exposures for these groups is warranted. Although the AWQC are generally based on chronic health effects data, they are intended to also be protective with respect to adverse effects that may reasonably be expected to occur as a result of elevated shorter-term exposures. EPA acknowledges this as a potential course of action and is, therefore, recommending these default values for States and Tribes to utilize in such situations.

EPA is recommending an assumption of 28 kg as a default body weight to calculate AWQC to provide additional protection for children when the chemical of concern indicates health effects in children are of predominant concern (i.e., test results show children are more susceptible due to less developed immune systems, neurological systems, and/or lower body weights). The value is based on the mean body weight value of 28 kilograms for children ages 0–14 years old, which combines body weight values for individual age groups within this larger group. The mean value is based on body weight information from NHANES II (NCHS, 1987) for individual-year age groups between 6 months and 14 years old, and weights the values for these different ages by current population percentages (from U.S. Bureau of the Census, 1996) to represent a body weight value applicable to the current population of children aged 0–14 years. The same mean body weight of 28 kilograms is also obtained using body weight values from Ershow and Cantor (1989) for five age groups within this range of 0–14 years, and applying the above weighting method. The 28 kg assumption is also consistent with the estimated fish intake rates proposed for children in the same age range. Unfortunately, fish intake rates for finer age group divisions are not possible due to the limited sampling base from the fish intake survey; there is limited confidence in calculated values (*e.g.*, the mean) for such fine age groups. Given this limitation, the broad age category of body weight for children is suitable for use with the default fish intake assumption.

Given the hierarchy of preferences regarding the use of fish intake information [see Section C.3.(d)], States may have more comprehensive data and prefer to target a more narrow, younger age group. If States choose to specifically evaluate infants and toddlers, EPA would recommend 10 kg as a default body weight assumption for water intake for children ages 1–3 years old, as has been used in other EPA water programs. The 10th, 25th, and

50th percentile values of body weight for children 1–3 years old are 10.4, 11.8, and 13.6 kg, respectively, with a mean value of 14.1 kg (Ershow and Cantor 1989). Based on an analysis of the NHANES II data base reported in the EPA's Exposure Factors Handbook, the 10th, 25th, and 50th percentile values for children less than 3 years old are 8.5, 9.6, and 11.3 kg for females, and 9.1, 10.3, and 11.8 kg for males, respectively (USEPA, 1989). The mean for both sexes from NHANES II is 11.6 kg. The 10 kg body weight assumption is representative of the majority of children under the age of 3. As with the 28 kg assumption, EPA recommends a more protective body weight assumption than the median value because of the increased susceptibility of infants and toddlers to acute effects from water-based formula intake.

Body weight values for individual ages within the larger range of 0–14 years are listed in the TSD for this Notice for those States and Tribes who wish to use body weight values for these individual groups. States and Tribes may wish to consider certain general developmental ages (*e.g.*, infants, pre-adolescents, etc.), or certain specific developmental landmarks (*e.g.*, neurological development in the first four years), depending on the chemical of concern. EPA encourages States and Tribes to choose a body weight intake from the tables presented in the TSD, if they believe a particular age subgroup is more appropriate.

(3) Rates Based on Combining Intake and Body Weight. As discussed below, EPA is also soliciting comments on whether intake assumptions should be given on a per kg body weight basis. Under this alternate approach, default body weight assumptions of 10, 28, 65, or 70 kg are not needed because the approach involves dividing individual respondents' intake rates (determined in surveys of drinking water or fish intake) by their own seif-reported body weights.

(b) *Drinking Water Intake Rates.* (1) Rate Protective of Human Health from Chronic Exposure. The 1980 AWQC National Guidelines assumed a water intake rate of 2 L/day. There is comparatively little variability in water intake within the population, compared to fish intake (i.e., drinking water intake varies, by and large, by about a three-fold range, whereas fish intake can vary by 100-fold). The 50th, 75th, and 90th percentile values for adults 20–64 years old are 1.3, 1.7, and 2.3 L/day, respectively (Ershow and Cantor, 1989). The 2 L/day value represents the 84th percentile for adults from the Ershow and Cantor study. EPA recommends maintaining the default tap water intake rate of 2 L/day. Individuals who work or exercise in hot climates could have water consumption rates significantly above 2 L/day, and EPA believes that States and Tribes should consider regional or occupational variations in water consumption. EPA believes that the 2 L/day assumption is representative of a majority of the population over the course of a lifetime. This assumption was used with the 1980 methodology and has also been used in EPA's drinking water program. Although a policy decision, 2 L/day is a reasonable and protective determination that represents the intake of most water consumers in the general population according to available drinking water studies, as summarized above and described in greater detail in the TSD. EPA believes that this assumption continues to represent an appropriate risk management decision.[15] Based on the study data, EPA also recommends 2 L/day for women of childbearing age.

(2) Rates Protective of Developmental Human Health Effects. As noted above, because infants and children have a higher water consumption per body weight compared to adults, a water consumption rate indicative of children is proposed for use when RfDs are based on health effects in children. Use of this water consumption rate should result in adequate protection for infants and children when setting criteria based on health effects for this target population. Estimating a mean drinking water intake for children ages 0–14 years old, combining drinking water intake for five age groups within the larger age group of 0–14 years from Ershow and Cantor (1989) and weighting by current population estimates (from U.S. Bureau of the Census, 1996) results in a drinking water intake of approximately 750 ml. As a slightly more protective measure than using 750 ml, EPA recommends a drinking water intake of 1 L/day to, again, represent a majority of the population in this age group. This value is equivalent to about the 75th percentile value, which is 960 ml, for children ages 1–10 years old (Ershow and Cantor, 1989). The 50th, 75th, and 90th percentile values for children 1–3 years old are 0.6, 0.8, and 1.2 L/day, respectively (Ershow and Cantor, 1989).

(3) Rates Based on Combining Drinking Water Intake and Body Weight. As an alternative to considering body weight and drinking water intake rates separately, EPA is considering using the actual intake per body weight data that is available in the Ershow and Cantor (1989) report. This approach has the advantage of using self-reported body weights of survey respondents, instead of converting to the 70 kg or 10 kg default assumptions. These alternate values are presented in Ershow and Cantor (1989) or can be determined from Ershow and Cantor (1989) and U.S. Bureau of the Census (1996) using the methods described above to determine a weighted mean. For example, the mean, 50th, 75th, and 90th percentile values of tap water intake for adults 20–64 years old are 19.9, 18.2, 25.3, and 33.7 ml/kg body weight, respectively. Using information from Ershow and Cantor (1989) for fine age categories, the weighted mean intake for children ages 0–14 years old is 32.6 ml/kg, and using the same weighting procedure, the approximate 50th, 75th, and 90th percentiles for this age group are 28.6, 42.3, and 59.3 ml/kg. The 50th, 75th, and 90th percentile values of tap water intake for children 1–3 years old are 41.4, 60.4, and 82.1 ml/kg body weight, respectively. It should be noted that in their 1993 review, SAB felt that using drinking water intake rate assumptions on a per body weight basis would be more accurate, but did not believe this change would appreciably affect the criteria values.

(c) Incidental Ingestion from Ambient Surface Waters. To prevent potential health risks from incidental recreational ingestion, an incidental intake rate is necessary. EPA recommends using 10 ml/day as the chronic incidental ingestion rate. The value would be divided by the adult body weight of 70 kg. This chronic intake is based on information about the amount of water that may be ingested in a given hour of recreational exposure to water (30 ml) multiplied by the number of hours of recreational water use throughout a year and averaged over the year to obtain an average intake per day. (Refer to the TSD for further explanation.) As stated earlier, this intake would only be used in those cases where the waterbody is not used for potable water (e.g., estuaries) and criteria are based solely on fish ingestion. When developing criteria for waterbodies that are potential drinking water sources, the assumption of 2 L/day of direct ingestion is likely to account for the additional possible ingestion via recreational activities and, therefore, this incidental rate will not be added.

(d) Fish Intake Rates. (1) Rates Protective of Human Health from Chronic Exposure. When deriving AWQC, EPA strives to provide adequate

[15] EPA is currently conducting an analysis to generate estimates of water intake based on recent data from the USDA's CSFII. Estimates will be generated by population demographics including, age, gender, race, socioeconomic status and geographical region. Results of this analysis may be considered in the future with this methodology.

protection [as described earlier in Section C.1.(a)(1), Policy Issues] from adverse health effects to highly exposed populations such as recreational and subsistence fishers as well as the general population. Based on available studies that characterize consumers of fish, recreational fishers and subsistence fishers appear to be two distinct groups whose intake rates are greater than the general population. It is, therefore, EPA's decision to discuss intakes for these two groups, in addition to the general population. Because the level of fish intake in highly exposed populations varies by geographical location, EPA suggests a four preference hierarchy for deriving consumption rates that encourages use of the best local, State, or regional data available but provides a default rate based on national statistics if there are no other data. A thorough discussion of the development of this policy method and relevant data sources is contained in the TSD. The four preference hierarchy is: (1) use of local data; (2) use of data reflecting similar geography/population groups; (3) use of data from national surveys; and (4) use of proposed default intake rates.

The recommended four preference hierarchy is intended for use in evaluating fish intake from fresh and estuarine species only. Therefore, to protect humans who additionally consume marine species of fish, the marine portion should be considered as part of the "other sources of exposure" when calculating an RSC or dietary value (DT in the 1980 methodology equation). Refer to the TSD for further discussion. States and Tribes need to ensure that when evaluating overall exposure to a contaminant, marine fish intake is not double-counted with the other dietary intake estimate used. Coastal States and Tribes that believe accounting for total fish consumption (*i.e.*, fresh/estuarine and marine species) is more appropriate for protecting the population of concern may do so, provided that the marine intake component is not double-counted with the RSC estimate. Throughout this Section, the terms "fish intake" or "fish consumption" are used. They generally refer to the consumption of finfish and shellfish, and the national survey described in this section includes both. States and Tribes should ensure that when selecting local or regionally-specific studies, both types are included when the population exposed are consumers of both types.

EPA's first preference is that States and Tribes use the results from fish intake surveys of local watersheds within the State to establish fish intake assumptions that are representative of the defined populations being addressed for the particular waterbody. Again, EPA recommends that data indicative of fresh/estuarine species only be used which is, by and large, most appropriate for developing AWQC. EPA also recommends the use of cooked weight intake values which is discussed in greater detail with the fourth preference. States and Tribes may use either high-end values (such as the 90th or 95th percentile values) or central tendency values (mean or medians) for an identified population that they plan to protect (*e.g.*, subsistence fishers or sport fishers). The mean or median value should be the lowest value considered by States or Tribes when choosing intake rates for use in criteria derivation. Furthermore, when considering median values from fish consumption studies, States and Tribes need to ensure that the distribution is based on survey respondents who reported consuming fish because surveys based on both consumers and nonconsumers typically result in median values of zero. If a State or Tribe chooses values (whether the central tendency or high-end values) from studies that particularly target high-end consumers, these values should be compared to high-end fish intake rates for the general population to make sure that the high-end consumers within the general population would be protected by the chosen intake rates. EPA believes this is a reasonable procedure and is also consistent with recent water quality guidance established for the Great Lakes. (See 60 FR 15366, Thursday, March 23, 1995). States and Tribes may wish to conduct their own surveys of fish intake, and EPA guidance is available on methods to conduct such studies in Guidance for Conducting Fish and Wildlife Consumption Surveys (USEPA, 1997b). Results from broader geographic regions in which the State or Tribe is located can also be used, but may not be as applicable as results from local watersheds. Since such studies would ultimately form the basis of a State or Tribe's AWQC, EPA would review any surveys of fish intake for consistency with the principles of EPA's guidance, as part of the Agency's review under 303(c).

If surveys conducted in the geographic area of the State or Tribe are not available, EPA's second preference is that States and Tribes consider results from existing fish intake surveys that reflect similar geography and population groups (*e.g.*, from a neighboring State or Tribe or a similar watershed type), and follow the method described above regarding target values to derive a fish intake rate. Again, EPA recommends the use of cooked weight intake values and the use of fresh/estuarine species data only. Results of existing local and regional surveys are discussed in greater detail in the TSD.

If applicable consumption rates are not available from local, State, or regional surveys, EPA's third preference is that States and Tribes select intake rate assumptions for different population groups from national food consumption surveys. EPA has analyzed one such national survey, the combined 1989, 1990, and 1991 Continuing Survey of Food Intake by Individuals (CSFII). The CSFII, conducted annually by the USDA, collects food consumption information from a probability sample of the population of the 48 conterminous states. Respondents to the survey provide three days of dietary recall data. A detailed description of the combined 1989–1991 CSFII survey, the statistical methodology, and the results and uncertainties of the EPA analyses are provided in USEPA (1998). The TSD for this Notice presents selected results from this report including point and interval estimates of combined finfish and shellfish consumption for the mean, 50th (median), 90th, 95th, and 99th percentiles. The estimated fish consumption rates are by fish habitat (*i.e.*, freshwater/estuarine, marine and all habitats) for the following population groups: (1) All individuals; (2) individuals age 18 and over; (3) women ages 15–44; and (4) children age 14 and under. Three kinds of estimated fish consumption rates are provided: (1) per capita rates [*i.e.*, rates based on consumers and nonconsumers of fish (from the survey period. Refer to the TSD for further discussion)]; (2) acute consumption rates (*i.e.*, rates based on respondents who reported consuming finfish or shellfish during the three-day reporting period); and (3) per capita consumption by body weight (*i.e.*, per capita rates reported as milligrams of fish per kilogram of body weight per day).

In addition, the TSD presents estimated per capita finfish and shellfish consumption rates for nine geographical regions of the U.S. based on the 1989–1991 CSFII. States and Tribes may wish to use these regional values if they do not have significant tier one or tier two data but do have limited regional data, and if they believe that the consumption rates of the particular population of concern differ from the national rates. The TSD also discusses precautions regarding their use due to limitations in the data set.

Similarly, if a State or Tribe has not identified a separate well-defined population of high-end consumers and believes that the national data from the CSFII are representative, they may choose these rates.

EPA's fourth preference is that States and Tribes use as fish intake assumptions the following default rates, based on the 1989–1991 CSFII data, that EPA believes are representative of fish intake for different population groups: 17.80 g/day for the general adult population and sport fishers, and 86.30 g/day for subsistence fishers. These are risk management decisions that EPA has made after evaluating numerous fish intake surveys. These values represent the intake of freshwater/estuarine finfish and shellfish as consumed. As with the other preferences, EPA requests that States and Tribes routinely consider whether there is a substantial population of sport fishers or subsistence fishers when developing site-specific estimates, rather than automatically basing them on the typical individual. Because the combined 1989–1991 CSFII survey is national in scope, EPA proposes that the results from this survey be used to estimate fish intake for deriving national criteria. EPA has recognized the data gaps and uncertainties associated with the analysis of the CSFII in the process of making its default recommendations. The estimated mean of freshwater and estuarine fish ingestion for adults is 5.6 g/day, and the median is 0 g/day. The estimated 90th percentile is 17.80 g/day; the estimated 95th percentile is 39.04 g/day; and the estimated 99th percentile is 86.30 g/day. The median value of 0 g/day may reflect the portion of individuals in the population who never eat fish as well as the limited reporting period (3 days) over which intake was measured. By applying as a default 17.8 g/day for the general adult population, EPA intends to select an intake rate that is protective of a majority of the population (again, the 90th percentile of consumers and nonconsumers according to the CSFII survey data). EPA further considers this rate to be indicative of the average consumption among sport fishers based on averages in the studies reviewed, which are presented in the TSD. Similarly, EPA believes that the assumption of 86.30 g/day is within the range of average consumption estimates for subsistence fishers based on the studies reviewed. The 95th percentile value, 39.04 g/day, is also within the range of average consumption for subsistence fishers, although on the low end according to the studies reviewed. The 1992 National Workshop experts acknowledged that the high-end values are representative of rates for highly exposed groups such as subsistence fishermen, specific ethnic groups, or other high-risk people. EPA is aware that some local and regional studies indicate greater consumption among Native American, Pacific Asian American, and other subsistence consumers and recommends the use of those studies in appropriate cases, as indicated by the first and second preferences.

The estimated values derived from the combined 1989–1991 CSFII survey can be compared with the default values in the 1980 AWQC National Guidelines. The 1980 AWQC National Guidelines recommended a fish intake rate of 6.5 g/day. This value was based on the mean per capita consumption rate of freshwater and estuarine finfish and shellfish from 30-day diary results that were reported in the 1973–1974 National Purchase Diary Survey. It is generally believed that the consumption of fish has increased somewhat in recent years due to nutritional and other preferential choices. When comparing the old default rate of 6.5 g/day with the new arithmetic mean indicated above (5.6 g/day), the use of cooked weights and the redesignation of certain species (as described in the TSD) must be kept in mind.

As indicated above, the default intake values proposed, as well as the rest of the CSFII values presented in the TSD tables, are based on the cooked weights of the fish analyzed, which was the basis of the survey design. There has been some question regarding whether to use cooked or uncooked weights of fish intake for deriving the AWQC. Studies show that, typically, with a filet or steak of fish, the weight loss in cooking is about 20 percent; that is, the uncooked weight is approximately 20 percent higher (Jacobs *et al.*, 1998). This obviously means that using cooked weights results in a slightly lower intake rate and slightly less stringent AWQC. In researching consumption surveys for this proposal, EPA has found that some surveys have reported rates for cooked fish, others have reported uncooked rates, and many more are unclear as to whether cooked or uncooked rates are used.

There are several issues regarding whether to use cooked or uncooked weights when estimating fish consumption rates. The first issue concerns the effect of the cooking process on the concentration of the toxicant in the fish tissue. For example, if in the cooking process, the mass of a toxicant in the fish tissue remains constant, then the concentration in the fish tissue will increase (the weight of the fish tissue decreases). This appears to be the case with a chemical such as mercury because it binds strongly to proteins and, thus, concentrates in the muscle tissue (Minnesota Department of Health, 1992). However, as has been seen with numerous organic chemicals (*e.g.*, PCBs), some cooking processes tend to decrease the mass of toxicant, thus reducing the concentration in the fish tissue (Zabik, *et al.*, 1993). Of importance here is that the mass of the contaminant in the fish tissue stays constant or is reduced. Unfortunately, there are rather few chemicals for which measurements are available. This issue is complicated further by the fact that different chemicals accumulate in different parts of the fish; that is, some chemicals accumulate in the muscle tissue, some in the gills, some in the viscera, etc. Therefore, the method of preparation (i.e., cleaning and trimming) can greatly affect the potential intake of the contaminant, as can the cooking method and the considerable variation in both of these factors between species of fish. In addition, there is the relatively unexplored area of how the cooking process affects the nature of the chemical. Specifically, the cooking process may change the "parent" compound to a by-product, or form a different compound altogether.

Nevertheless, the cooked weight values are consistent with the recent Great Lakes guidance (which was specifically based on studies describing consumption rates of cooked fish) and, by and large, cooked fish is what people consume. This is also consistent with non-fish dietary estimates made by both EPA's pesticide program and FDA's Total Diet Study program. That is, their analyses are based on prepared foods, not raw commodities. However, EPA's Guidance For Assessing Chemical Contaminant Data For Use In Fish Advisories recommends analysis and advisories based on uncooked fish (USEPA, 1997c). States and Tribes should have the flexibility to consider raw fish consumption if they believe that the population they are targeting are consumers of raw fish. It should be noted that any raw shellfish consumed by respondents in the CSFII survey is included in the "as consumed" values. EPA cautions States and Tribes that the as consumed weights provided are not to be used for developing fish advisories, which is a substantially different program than the water quality criteria program.

Therefore, EPA recommends using cooked weight intake rates, as they better reflect the potential exposure from fish consumption versus using the

uncooked weights. If States and Tribes find that, when using site-specific or regional data, they are limited to data for uncooked weights only, they may choose to use these data in their calculations, provided that they adjust for the weight loss in cooking (*i.e.*, by reducing the value by 20 percent). If a State or Tribe believes that the population of concern is preparing fish in such a manner that the amount normally lost is actually consumed as well, then they may consider using the uncooked weight. In addition, EPA recommends assuming no change in contaminant concentration from cooking as a default. If information on chemical change from cooking is available, then States are encouraged to use this information. If a State or Tribe has information on chemical change from cooking, they may consider using a cooking loss factor to adjust the BAF accordingly.

It should be noted that there has been a redesignation of several species from how they were classified in the 1973–74 National Purchase Diary Fish Consumption Survey. Most significantly, salmon has been reclassified from a freshwater/estuarine species to a marine species. As marine harvested salmon represents approximately 99 percent of salmon consumption, removal reduces the overall fresh/estuarine fish consumption rate by 13 percent. Although they represent a very small percentage of freshwater/estuarine intake, land-locked and farm-raised salmon are still included. The basis for this decision is that the majority of the life span of all species of salmon (except land-locked and farm-raised populations) is spent in marine waters. This includes most of the species' growth phase, including the pre-spawning food gorging that the fish undertake. For the actual spawning event, most salmon fast, thus spending their energy making the trip to their spawning destination. This rationale is explained more fully, with citations, in the TSD. All of the species apportionments are indicated in Appendix A of the TSD (Tables A.31 through A.34) in parenthesis by the species name. The 13 percent reduction described above for salmon can be calculated via these tables.

(2) Rates Protective of Developmental Human Health Effects. Exposures resulting in health effects in children or developmental effects in fetuses may be of primary concern. As discussed at the beginning of Section C.3, depending on the type of exposure or effect, States and Tribes may wish to use exposure factors for children or women of childbearing age in these situations. As stated previously, EPA is not recommending the development of additional AWQC but is acknowledging that basing a criterion on these population groups is a potential course of action and is, therefore, proposing the following default intake rates for States and Tribes to utilize in such situations.

Since children have a higher fish consumption per body weight compared to adults, using a higher fish consumption rate per body weight may be needed for setting AWQC to assure adequate protection for children. EPA's preferences for States and Tribes in selecting assumptions for intake rates relevant for children is the same as that discussed above for establishing assumptions for average daily consumption rates for chronic effects, *i.e.*, in order of decreasing preference, results from fish intake surveys of local watersheds, results from existing fish intake surveys that reflect similar geography and population groups, the distribution of intake rates from nationally based surveys (*e.g.*, the CSFII), or finally, the default rate that EPA recommends below that is representative of a selected population group. The TSD for this Notice will present some distributional values related to the intake values relevant for assessing exposure when health effects to children are of concern. When an RfD is based on health effects in children, EPA recommends a default intake rate of 108.36 g/day for assessing those contaminants that exhibit adverse effects. This is equivalent to about the 90th percentile consumption rate for actual consumers of freshwater/estuarine finfish and shellfish for children ages 14 and under using the combined 1989–1991 results from the CSFII survey. The value was calculated based on data for only those children who ate any fish during the 3-day survey period, and the intake was averaged over the number of days during which fish was actually consumed. EPA believes that by selecting the data for consumers only, the 90th percentile is a reasonable intake rate to use in assessments for effects where children are of primary concern. As discussed previously, EPA is recommending a default body weight of 28 kg to address such potential effects from fish consumption by children. EPA is providing these intake assumption values for States and Tribes that choose to provide additional protection when developing criteria that they believe should be based on health effects in children. This is consistent with the rationale in the recent guidance established for the Great Lakes (as already cited) and is an approach that EPA believes is reasonable.

There are also cases in which pregnant women may be the population of most concern, due to the possibility of developmental effects that may result from exposures of the mother to toxicants. In these cases, fish intake rates specific to females of childbearing age are most appropriate when assessing exposures to developmental toxicants. When an RfD is based on developmental toxicity, EPA proposes a default intake rate of 148.83 g/day for assessing exposures for women of childbearing age from contaminants that cause developmental effects. This is equivalent to about the 90th percentile consumption rate for actual consumers of freshwater/estuarine finfish and shellfish for women ages 15–44 using the combined 1989–1991 results from the CSFII survey. As with the rate for children, this value represents only those women who ate fish during the 3-day survey period. As discussed previously, EPA is recommending a default body weight of 65 kg for women of childbearing age.

(3) Rates Based on Combining Fish Intake and Body Weight. As an alternative to looking at fish intake values separately from body weight, EPA is considering using the actual intake per body weight data. This approach has the advantage of using actual body weights of survey respondents, instead of converting to the 70 kg, 65 kg, 28 kg, or 10 kg default assumptions. In its 1993 review, SAB felt that using fish intake rate assumptions on a per body weight basis would be more accurate, but did not believe this change would appreciably affect the criteria values.

4. Request for Comments

1. EPA requests comment on the choice of population to protect and on the adequacy of their assumptions in protecting this population.

2. EPA requests comment on the Agency's recommendation to include the drinking water pathway explicitly in deriving the AWQC for the protection of human health where drinking water is a designated use.

3. EPA requests comment on the Agency's recommendation to continue the practice of setting AWQC that account for combined drinking water and fish consumption, as well as a separate criterion for fish/shellfish consumption alone.

4. EPA requests comment on whether AWQC based only on fish ingestion (or aquatic life criteria) adequately protect recreational users from health effects resulting from incidental ingestion from

water bodies not considered sources of potable water (e.g., estuaries).

5. EPA requests comment on the Agency's recommendation to include incidental ingestion in the calculation of AWQC in those cases where the water body is not used for potable water.

6. EPA requests comment on the Agency's recommendation that only a portion of the RfD be used in setting AWQC in order to account for other sources of exposure.

7. The Agency also requests comment on whether toxicity information (such as uncertainty factors, severity of effects, essentiality, and possible additive/synergistic effects) should be considered in allocating the RfD.

8. EPA requests comment on the choice of the Exposure Decision Tree approach and the choice of the 80 percent ceiling and 20 percent floor as bounding levels for the RfD allocation. The Agency also requests comment on the use of the subtraction approach and the percentage approach within the decision tree.

9. EPA requests comment on how inhalation and dermal absorption exposures from water should be estimated and included in calculating health-based criteria.

10. EPA requests comment on the appropriateness of including inhalation exposures when accounting for other sources of exposure in setting AWQC.

11. EPA requests comment on the Agency's recommendation to use existing data on differences in bioavailability between water, air, soils, and different foods when estimating total exposure for use in allocating the RfD. In the absence of such data, EPA will assume equal rates of absorption from different routes and sources of exposure. EPA requests comment on this assumption.

12. EPA requests comment on the Agency's recommendation to continue using the incremental risk approach that does not consider other exposure sources explicitly when setting AWQC for linear carcinogens, and to continue using other exposure sources in setting AWQC for threshold toxicants including noncarcinogens and nonlinear carcinogens.

13. EPA requests comment on whether a default body weight of 65 kg should be used in cases where pregnant women constitute the target population.

14. EPA requests comment on the Agency's proposal to use 28 kg as the default body weight to calculate AWQC which protects against adverse effects in children when the chemical of concern has an RfD based on health effects in children.

15. EPA requests comment on whether 10 kg or a different body weight should be used as the default assumption to calculate AWQC for children's health effects from water intake for children 1–3 years old, as has been used in other EPA water programs.

16. EPA requests comment on whether additional default body weights should be developed for finer age categories due to the consideration of different developmental stages.

17. EPA requests comment on whether to use separate tap water intake and body weight assumptions (e.g., 2 L/day, 70 kg body weight) or assumptions that combine tap water intake and body weight (e.g., 30 ml tap water/kg body weight), and what values should be used.

18. Although EPA is not recommending an incidental ingestion rate for derivation of criteria based on short-term health effects at this time, the Agency requests comment on the use of an intake of 30 ml/hour in cases where shorter-term effects may be considered in the derivation of criteria. (EPA assumes that this 30 ml incidental rate may be ingested by children, and thus for RfDs based on health effects in children, this value may be divided by the lower body weights of children to adequately protect them from health effects resulting from incidental ingestion.)

19. EPA requests comment on (1) the use of the CSFII survey results in setting national criteria given the known limitations (i.e., the 3-day reporting period); (2) whether EPA should select default rates for different population groups, including 17.80 g/day for sportfishers and 86.30 g/day for subsistence fishers in addition to the value of 17.80 g/day for the typical adult individual (EPA also requests comment on alternatively using 39.04 g/day for subsistence fishers); and (3) which default intake rate(s) should be used in setting criteria. With regard to the default alternative for subsistence fishers, EPA requests comment on which is more indicative of fresh/estuarine consumption rates among the population group.

20. EPA requests comment on the use of cooked versus uncooked fish intake weights, the concepts of mass and concentration of a toxicant in fish tissue and the potential changes from cooking, as well as the potential changes in the structure of the toxicant.

21. EPA requests comments on the rationale for redesignating salmon as a marine species, as well as the rationale for the other species designations.

22. EPA requests comments on the use of the default rate of 108.36 g/day of fish intake for children when assessing effects from contaminants that are based on health effects in children. EPA similarly requests comments on the use of the default intake rate of 148.83 g/day for women of childbearing age when assessing exposures from contaminants that cause developmental effects.

23. EPA requests comments on whether to use separate fish intake and body weight assumptions (e.g., 17.80 g/day, 70 kg body weight) or assumptions that combine fish intake and body weight (e.g., 254.3 mg fish/kg body weight), and what values should be used.

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D. Bioaccumulation

1. Introduction

Aquatic organisms can accumulate certain types of chemicals in their bodies when exposed to these chemicals in water, food, and other sources. This process is called bioaccumulation. For some chemicals, uptake through the food chain is the most important route of exposure. As lower trophic level organisms are consumed by higher trophic level organisms, the tissue concentrations of these chemicals may increase with each trophic level so that chemical residues in top carnivores may be many orders of magnitude greater than the concentration of the chemical in the environment. Although ambient concentrations of certain chemicals in the environment may be too low to affect the lowest level organisms, this biomagnification process can result in concentrations which may pose severe health risks to the consumers of top trophic level aquatic organisms.

In order to properly account for potential human exposure to waterborne contaminants, human health ambient water quality criteria should be developed based on principles of bioaccumulation. The degree to which chemicals bioaccumulate can vary widely (spanning several orders of magnitude) for different chemicals. Thus, if two chemicals are equal in every respect except for the extent to which they bioaccumulate, the chemical with the higher bioaccumulation factor (a measure of bioaccumulation) will have the lower water quality criterion. Prior to deriving a human health water quality criterion, the extent of bioaccumulation for the chemical of interest must be established.

2. Bioaccumulation and Bioconcentration Concepts

Bioaccumulation reflects the uptake and retention of a chemical by an aquatic organism from all surrounding media (*e.g.*, water, food, sediment). Bioconcentration refers to the uptake and retention of a chemical by an aquatic organism from water only. Both bioaccumulation and bioconcentration can be viewed simply as the result of competing rates of chemical uptake and depuration (chemical loss) by an aquatic organism. However, the rates of uptake and depuration can be affected by numerous factors including the physical and chemical properties of the chemical, the physiology and biology of the organism, environmental conditions, ecological factors such as food web structure, and the amount and source of the chemical. When the rates of chemical uptake and depuration are equal, the distribution of the chemical between the organism and its source(s) is said to be at equilibrium or at steady-state. For a constant chemical exposure, the time required to achieve steady-state conditions varies according to the properties of the chemical and other factors. For example, some chemicals require a long time to reach steady-state conditions between environmental compartments (e.g., many months for certain highly hydrophobic chemicals) while others reach steady-state relatively quickly (e.g., hours to days for certain hydrophilic chemicals).

The concept of steady-state or equilibrium conditions is very important when assessing or evaluating bioaccumulation and applying these principles in real world situations, such as the derivation of AWQC. For some chemicals and organisms that require relatively long time periods to reach steady-state, changes in water column chemical concentrations may occur on a much more rapid time scale compared to the corresponding changes in an organism's tissue concentrations. Thus, if the system departs substantially from steady-state conditions, the ratio of the tissue concentration to a water concentration which is not averaged over a sufficient time period may have little resemblance to the steady-state ratio and have little predictive value of long-term bioaccumulation potential. For highly bioaccumulative pollutants in dynamic systems, reliable BAFs can be determined only if, among other factors, water column concentrations are averaged over a sufficient period of time (*e.g.*, a duration approximating the amount of time predicted for the pollutant to reach steady-state). In addition, adequate spatial averaging of both tissue and water column concentrations is required to develop reliable BAFs for use in deriving human health ambient water quality criteria.

For this reason, a bioaccumulation factor (BAF) is defined in this Notice as representing the ratio (in L/kg) of a concentration of a substance in tissue to its concentration in the surrounding water in situations where the organism and its food are exposed and the ratio does not change substantially over time. A bioconcentration factor is considered to represent the uptake and retention of a substance by an aquatic organism from the surrounding water only, through gill membranes or other external body surfaces, in situations where the tissue-to-water ratio does not change substantially over time.

3. Existing EPA Guidance

In developing criteria to protect humans from the consumption of contaminated aquatic organisms, EPA has relied upon the BCF and occasionally BAF to relate water concentrations to the amount of a contaminant that is ingested.

BCFs are determined either by measuring bioconcentration in laboratory tests (comparing fish tissue residues to chemical concentrations in test waters), or by predicting the BCF from a chemical's octanol-water partition coefficient (K_{ow} or P). The log of the octanol-water partition coefficient (log K_{ow} or log P) has been shown to be empirically related to the log of the BCFs (*e.g.*, Mackay, 1982; Connell, 1988; Veith *et al.*, 1979), as described further by the equations below.

The 1980 AWQC National Guidelines for deriving human health criteria allowed for the use of laboratory-measured or predicted BCFs when the preferred field-measured BCFs (equivalent to field-measured bioaccumulation factors (BAFs) described below) were not available. In those cases where an appropriate laboratory-measured BCF was not available, the equation "log BCF = (0.85 log K_{ow}) − 0.70" was used (Veith *et al.*, 1979) to estimate the BCF for aquatic organisms.

In 1991, EPA issued the final "Technical Support Document for Water Quality-Based Toxics Control" (EPA 505/2–90–001) and a draft document entitled "Assessment and Control of Bioconcentratable Contaminants in Surface Waters" for notice and comment (56 FR 13150). These documents, relying on additional research into the relationship between BCF and log K_{ow},

recommend that a slightly different equation be used to derive BCFs in the absence of laboratory-measured BCFs (Veith and Kosian, 1983; log BCF = 0.79 log K_{ow} − 0.40).

EPA's 1991 National guidance documents, the "Technical Support Document for Water Quality-Based Toxics Control" and draft "Assessment and Control of Bioconcentratable Contaminants in Surface Waters," recommend a methodology for estimating the BAF where there is an absence of a field-measured BAF. This methodology multiplies the laboratory-measured or predicted BCF by a factor which accounts for the biomagnification of a pollutant through trophic levels in a food chain. As larger predatory aquatic organisms (e.g., salmon) consume other fish and aquatic organisms, the amount of some contaminants in the consumed fish is concentrated in the predator. The factor which accounts for this biomagnification through the food chain is called the food chain multiplier (FCM) in these 1991 National guidance documents. EPA calculated the FCMs using a model of the step-wise increase in the concentration of an organic chemical from phytoplankton (trophic level 1) through the top predatory fish level of a food chain (trophic level 4) (Thomann, 1989).

The FCMs were determined by first running Thomann's model to generate BCFs and BAFs for trophic level 2, and BAFs for trophic levels 3 and 4. This was done for a range of log K_{ow} values from 3.5 to 6.5, at intervals of a tenth of log K_{ow} value. Second, the FCMs for each log K_{ow} value in this range were calculated using the following equations:

For trophic level 2 (zooplankton):

$$\text{FCM for Trophic Level 2} = \frac{\text{BAF2}}{\text{BCF2}}$$

For trophic level 3 (small fish):

$$\text{FCM for Trophic Level 3} = \frac{\text{BAF3}}{\text{BCF2}} \quad \text{(Equation IIID-1)}$$

For trophic level 4 (top predator fish):

$$\text{FCM for Trophic Level 4} = \frac{\text{BAF4}}{\text{BCF2}} \quad \text{(Equation IIID-2)}$$

Where BCF2 is the BCF for trophic level 2 organisms, and BAF2, BAF3, and BAF4 are the BAFs for trophic levels 2, 3, and 4, respectively.

On March 23, 1995 (60 FR 15366), EPA promulgated the Great Lakes Water Quality Initiative (GLWQI or GLI) guidance. The GLWQI guidance incorporated BAFs in the derivation of criteria to protect human health because it is believed that BAFs are better predictors of chemical concentrations in fish tissue than BCFs since BAFs include consideration of contaminant uptake from all routes of exposure (i.e., which occurs in field situations). The final GLWQI guidance established a hierarchy of four methods for deriving BAFs for nonpolar organic chemicals: (1) Field-measured BAFs; (2) predicted BAFs derived using a field-measured biota-sediment accumulation factor (BSAF); (3) predicted BAFs derived by multiplying a laboratory-measured BCF by a food chain multiplier; and (4) predicted BAFs derived by multiplying a BCF calculated from the K_{ow} by a food-chain multiplier (U.S. EPA, 1995a). The GLI incorporated several improvements in the methodology for deriving BAFs. For example, the GLI used the Gobas model (Gobas, 1993) for estimating FCMs that accounted for both the benthic and pelagic food webs. The Thomann model described above only accounted for the pelagic food web. Other improvements included the use of the BSAF method for estimating BAFs. The BSAF method allows for the estimation of BAFs for those chemicals that are difficult to measure in the ambient water due to their extremely high hydrophobicity, such as the polychlorinated dibenzo-p-dioxins.

The revised methodology in this Notice for deriving human health AWQC explicitly addresses various attributes of how bioaccumulative chemicals behave and accumulate in aquatic ecosystems. For certain chemicals where uptake from exposure to multiple media is important, EPA is emphasizing the assessment of bioaccumulation (i.e., uptake from water, food, sediments) over bioconcentration (i.e., uptake from water). Consistent with the final GLI, the revisions to EPA's national AWQC methodology establishes the same four-method hierarchy of procedures for deriving BAFs for nonpolar organic chemicals.

For inorganic chemicals, EPA proposes that the AWQC be based on (in order of preference): (1) An appropriately determined field-measured BAF; (2) a laboratory-measured BCF multiplied by a field-measured FCM; or (3) a laboratory-measured BCF. Because inorganic substances do not predominantly partition to lipids, the BAF for metals do not need to be normalized by lipid content.

4. Definitions

Baseline BAF (BAF_l^{fd}). For organic chemicals, a BAF (in L/kg-lipid) that is based on the concentration of freely dissolved chemical in the ambient water and the lipid normalized concentration in tissue; for inorganic chemicals, a BAF that is based on the wet weight of the tissue.

Baseline BCF (BCF_l^{fd}). For organic chemicals, a BCF (in L/kg-lipid) that is based on the concentration of freely dissolved chemical in the ambient water and the lipid normalized concentration in tissue; for inorganic chemicals, a BCF that is based on the wet weight of the tissue.

Bioaccumulation. The net accumulation of a substance by an organism as a result of uptake from all environmental sources.

Bioaccumulation Factor (BAF). The ratio (in L/kg-tissue) of the concentration of a substance in tissue to its concentration in the ambient water, in situations where both the organism and its food are exposed and the ratio does not change substantially over time. The BAF is calculated as:

$$\text{BAF} = \frac{C_t}{C_w} \quad \text{(Equation IIID-3)}$$

where:

C_t = Concentration of the chemical in the wet tissue (either whole organism or specified tissue)

C_w = Concentration of chemical in water

Bioconcentration. The net accumulation of a substance by an aquatic organism as a result of uptake directly from the ambient water, through gill membranes or other external body surfaces.

Bioconcentration Factor (BCF). The ratio (in L/kg-tissue) of the concentration of a substance in tissue of an aquatic organism to its concentration in the ambient water, in situations where the organism is exposed through the water only and the ratio does not change substantially over time. The BCF is calculated as:

$$BCF = \frac{C_t}{C_w} \qquad \text{(Equation IIID-4)}$$

where:

C_t = Concentration of the chemical in the wet tissue (either whole organism or specified tissue)

C_w = Concentration of chemical in water

Biota-Sediment Accumulation Factor (BSAF). The ratio (kg of sediment organic carbon per kg of lipid) of the lipid-normalized concentration of a substance in tissue of an aquatic organism to its organic carbon-normalized concentration in surface sediment, in situations where the ratio does not change substantially over time, both the organism and its food are exposed, and the surface sediment is representative of average surface sediment in the vicinity of the organism. The BSAF is defined as:

$$BSAF = \frac{C_l}{C_{soc}} \qquad \text{(Equation IIID-5)}$$

Where:

C_l = The lipid-normalized concentration of the chemical in tissues of the biota (µg/g lipid)

C_{soc} = The organic carbon-normalized concentration of the chemical in the surface sediment (µg/g sediment organic carbon)

Biomagnification. The increase in tissue concentration of poorly depurated materials in organisms along a series of predator-prey associations, primarily through the mechanism of dietary accumulation.

Biomagnification Factor (BMF). The ratio (unitless) of the tissue concentration of a predator organism at a particular trophic level to the tissue concentration in its prey organism at the next lowest trophic level, for a given waterbody and chemical exposure. For organic chemicals, a BMF can be calculated using lipid-normalized concentrations in the tissue of organisms at two successive trophic levels as:

$$BMF_{(TL,n)} = \frac{C_{l(TL,n)}}{C_{l(TL,n-1)}} \qquad \text{(Equation IIID-6)}$$

Where:

$C_{l(TL,n)}$ = Lipid-normalized concentration in appropriate tissue of predator organism at trophic level "n"

$C_{l(TL,n-1)}$ = Lipid-normalized concentration in appropriate tissue of prey organism at the next lowest trophic level from the predator.

For inorganic chemicals, a BMF can be calculated using chemical concentrations in the tissue of organisms at two successive trophic levels as:

$$BMF_{(TL,n)} = \frac{C_{t(TL,n)}}{C_{t(TL,n-1)}} \qquad \text{(Equation IIID-7)}$$

Where:

$C_{t(TL,n)}$ = Concentration in appropriate tissue of predator organism at trophic level "n" (may be either wet weight or dry weight concentration so long as both the predator and prey concentrations are expressed in the same manner)

$C_{t(TL,n-1)}$ = Concentration in appropriate tissue of prey organism at the next lowest trophic level from the predator (may be either wet weight or dry weight concentration so long as both the predator and prey concentrations are expressed in the same manner)

As explained in the TSD, BMFs can also be related to (and calculated from) FCMs and baseline BAFs.

Depuration. The loss of a substance from an organism as a result of any active or passive process.

Food-Chain Multiplier (FCM). The ratio of a baseline BAF for an organism of a particular trophic level to the baseline BCF (usually determined for organisms in trophic level one).

Freely Dissolved Concentration. For hydrophobic organic chemicals, the concentration of the chemical that is dissolved in ambient water, excluding the portion sorbed onto particulate or dissolved organic carbon. The freely dissolved concentration is considered to represent the most bioavailable form of an organic chemical in water and, thus, is the form that best predicts bioaccumulation. The freely dissolved concentration can be determined as:

$$C_w^{fd} = (f_{fd}) \cdot (C_w^t) \qquad \text{(Equation IIID-8)}$$

Where:

C_w^{fd} = Freely dissolved concentration of the organic chemical in ambient water

C_w^t = Total concentration of the organic chemical in ambient water

f_{fd} = Fraction of the total chemical in ambient water that is freely dissolved

Lipid-normalized Bioaccumulation Factor (BAF_l). The ratio (in L/kg- lipid) of a substance's lipid-normalized concentration in tissue to its concentration in the ambient water, in situations where both the organism and its food are exposed and the ratio does not change substantially over time. The lipid-normalized BAF is calculated as:

$$BAF_l = \frac{C_l}{C_w} \qquad \text{(Equation IIID-9)}$$

Where:

C_l = Lipid-normalized concentration of the chemical in whole organism or specified tissue

C_w = Concentration of chemical in water

Lipid-normalized Bioconcentration Factor (BCF_l). The ratio (in L/kg- lipid) of a substance's lipid-normalized concentration in tissue of an aquatic organism to its concentration in the ambient water, in situations where the organism is exposed through the water only and the ratio does not change substantially over time. The lipid-normalized BCF is calculated as:

$$BCF_l = \frac{C_l}{C_w} \qquad \text{(Equation IIID-10)}$$

Where:

C_l = Lipid-normalized concentration of the chemical in whole organism or specified tissue

C_w = Concentration of chemical in water

Lipid-normalized Concentration (C_l). The total concentration of a contaminant in a tissue or whole organism divided by the lipid fraction in that tissue or whole organism. The lipid-normalized concentration can be calculated as:

$$C_l = \frac{C_t}{f_l} \qquad \text{(Equation IIID-11)}$$

where:

C_t = Concentration of the chemical in the wet tissue (either whole organism or specified tissue)

f_l = Fraction lipid content in the organism or specified tissue

Octanol-water Partition Coefficient (K_{ow}). The ratio of the concentration of a substance in the n-octanol phase to its concentration in the aqueous phase in an equilibrated two-phase octanol-water system. For log K_{ow}, the log of the octanol-water partition coefficient is a base 10 logarithm.

Organic Carbon-normalized Concentration (C_{soc}). For sediments, the total concentration of a contaminant in

sediment divided by the fraction of organic carbon in sediment. The organic carbon-normalized concentration can be calculated as:

$$C_{soc} = \frac{C_s}{f_{oc}} \qquad \text{(Equation IIID-12)}$$

where:

C_s = Concentration of chemical in sediment
f_{oc} = Fraction organic carbon in sediment

Uptake. Acquisition by an organism of a substance from the environment as a result of any active or passive process.

5. Determining Bioaccumulation Factors for Nonpolar Organic Chemicals

The calculation of a BAF for a nonpolar organic chemical (chemicals that do not readily dissolve in water) used in the derivation of AWQC is a two-step process. The first step is to calculate a baseline BAF for the chemical of interest using information from the field site or laboratory where the original data were collected (*e.g.*, the lipid content of the species collected and the freely dissolved fraction of the chemical in water at the site where the data were collected). If information used to estimate fish consumption rates indicates that organisms are being consumed from different trophic levels, then baseline BAFs need to be determined for each of the relevant trophic levels (see Section 6 for determining baseline BAFs).

The second step is to calculate a BAF (or BAFs) for the chemical that will be used in the derivation of AWQC using information from the location where the aquatic species of interest are consumed (*e.g.*, the lipid content of the aquatic species consumed by humans and the freely dissolved fraction of the chemical in water at the site where the aquatic species are being consumed). The difference in a baseline BAF and a BAF used in the derivation of AWQC is that baseline BAFs can be used for extrapolating from one species to another and from one water body to another. This is the case because baseline BAFs are lipid-normalized which enables extrapolation for organic chemicals from one species to another and are based on the freely dissolved concentration of organic chemicals which enables extrapolation from one water body to another (the importance of these concepts is discussed below). Baseline BAFs, however, cannot be used directly in the derivation of AWQC because they may not reflect the conditions in the area of interest (*e.g.*, the lipid content of the aquatic species consumed in the area of interest and the freely dissolved fraction of the chemical in the area of concern).

Depending on the type of information available for a given chemical, different procedures may be used to determine the baseline BAF. The most preferred baseline BAFs are those derived using appropriate field data. Field-measured BAFs, however, have not been determined for all chemicals. Thus, EPA recommends a hierarchy of procedures to determine BAF values. The data preference for derivation of baseline BAFs for nonpolar organic chemicals is as follows (in order of priority):

1. A field-measured baseline BAF derived from a field study of acceptable quality;
2. A predicted baseline BAF derived from a field-measured BSAFs of acceptable quality;
3. A predicted baseline BAF derived from a laboratory-measured BCF of acceptable quality and a food-chain multiplier (FCM); or
4. A predicted baseline BAF derived from an acceptable K_{ow} and a food-chain multiplier.

While EPA recommends the above hierarchy for determining final baseline BAF values, for comparative purposes, baseline BAFs should be determined for each chemical by as many of the four methods as available data allow. Comparing baseline BAFs derived using the different methods recommended above can provide insight for identifying and evaluating any discrepancies in the BAF determinations that might occur. The information needed to derive an acceptable baseline BAF using each of the four methods is discussed in Section D.6. Section D.7 discusses the information needed to derive an acceptable BAF for use in the calculation of AWQC.

6. Estimating Baseline BAFs

All the baseline BAFs for nonpolar organic chemicals should be expressed on a freely dissolved and lipid-normalized basis. In addition, because bioaccumulation can be strongly influenced by the trophic level of aquatic organisms, baseline BAFs need to be determined on a trophic level-specific basis. The procedures for adjusting a field-measured BAF or field-measured BSAF or laboratory-measured BCF to a freely dissolved and lipid-normalized basis are discussed below.

(a) Field-Measured Baseline BAF. Appropriately derived field-measured BAFs are considered first in the data preference hierarchy for calculating baseline BAFs because they directly reflect any chemical metabolism that may occur and site-specific differences in the aquatic food web that may affect bioaccumulation. The calculation of a field-measured baseline BAF expressed on a freely dissolved and lipid-normalized basis requires information on: (1) A field-measured BAF based on the total concentration of a chemical in the tissue of the aquatic organism sampled and the total concentration of the chemical in the ambient water; (2) the fraction of tissue that is lipid in the aquatic organism of interest; and (3) either the measured or estimated freely dissolved fraction of the total chemical in the ambient water where the aquatic species were collected (to estimate the freely dissolved fraction for a chemical requires information on the particulate and dissolved organic carbon content in the ambient water and the K_{ow} of the chemical of interest). The equation for deriving a field-measured baseline BAF expressed on a freely dissolved and lipid-normalized basis is:

$$\text{Baseline } BAF_l^{fd} = \left[\frac{\text{Measured } BAF_T^t}{f_{fd}} - 1\right]\left(\frac{1}{f_l}\right) \qquad \text{(Equation IIID-13)}$$

where:

Baseline BAF_l^{fd} = BAF expressed on a freely dissolved and lipid-normalized basis
Measured BAF_T^t = BAF based on total concentration in tissue and water
f_l = Fraction of the tissue that is lipid
f_{fd} = Fraction of the total chemical that is freely dissolved in the ambient water

For each trophic level, a species mean baseline BAF is calculated as the geometric mean if more than one acceptable, measured baseline BAF is available for a given species. For each trophic level, a trophic level-specific BAF is calculated as the geometric mean of the species mean measured baseline BAFs. Each of the three components for deriving the baseline BAF are described in further detail below.

Measured BAF^{L}_{T}. To estimate a measured BAF^{L}_{T}, information is needed on the total concentration of the pollutant in the tissue of the organism and the total concentration of the chemical in ambient water at the site of sampling. The equation to derive a measured BAF^{L}_{T} is:

$$\text{Measured } BAF^{L}_{T} = \frac{\text{Total concentration of chemical in tissue}}{\text{Total concentration of chemical in the ambient water}} \qquad \text{(Equation IIID-14)}$$

Application of data quality assurance procedures when measuring, estimating, and applying field-measured BAFs is of primary importance. The following general procedural and quality assurance requirements are important to be met for field-measured BAFs:

1. The field studies used should be limited to those that include fish at or near the top of the aquatic food chain (i.e., in trophic levels 3 and/or 4). In situations where consumption of lower trophic level organisms represents an important exposure route, such as certain types of shellfish at trophic level 2, the field study should also include appropriate target species at this trophic level.

2. The trophic level of the fish species should be determined taking into account the life stage(s) consumed and food web structure at the location(s) of interest.

3. Collection of bioaccumulation field data at a specific site for which criteria are to be applied and with the species of concern are preferred.

4. If data cannot be collected from every site for which criteria are to be applied, the site of the field study should not be so unique that the BAF cannot be extrapolated to other locations where the criteria and values will apply.

5. Samples of the appropriate resident species and the water in which they reside should be collected and analyzed using appropriate, sensitive, accurate, and precise methods to determine the concentrations of bioaccumulative chemicals present in the tissues and water samples.

6. For organic chemicals, the percent lipid should be either measured or reliably estimated for the tissue used in the determination of the BAF to permit the measured concentration of chemical in the organism's edible tissues to be lipid-normalized.

7. The concentration of the chemical in the water should be measured in a way that can be related to particulate organic carbon (POC) and/or dissolved organic carbon (DOC).

8. For organic chemicals with log K_{ow} greater than four, the concentrations of POC and DOC in the ambient water should be either measured or reliably estimated.

9. For inorganic chemicals where lipid normalization does not apply, BAFs should be used only if they are expressed on a wet weight basis; BAFs reported on a dry weight basis can be used only if they are converted to a wet weight basis using a conversion factor that is measured or reliably estimated for the tissue used in the determination of the BAF.

EPA is currently developing guidance for determining field-measured BAFs, including recommendations for minimum data base requirements. A more detailed discussion of the factors which need to be considered when determining field-measured BAFs is provided in the TSD.

Fraction Freely Dissolved (f_{fd}). Nonpolar organic chemicals can exist in water in several different forms including freely dissolved chemicals in the water column, chemicals bound to particulate matter, or chemicals bound to dissolved organic matter in the water. The form of the chemical has been shown to affect bioaccumulation, with the freely dissolved fraction of a chemical considered to be the best expression of the bioavailable form to aquatic organisms. Because the amount of chemical that is freely dissolved may differ among water bodies due to differences in the total organic carbon in the water, bioaccumulation factors which are based on the concentration of freely dissolved chemical in the water will provide the most universal bioaccumulation factor for organic chemicals when averaging bioaccumulation factors from different studies (*i.e.*, BAFs based on the freely dissolved chemical are most predictable between sites). However, BAFs based on the total concentration of the chemical in water (*i.e.*, the freely dissolved plus that sorbed to particulate organic carbon and dissolved organic carbon) can often be measured more accurately than BAFs based on freely dissolved concentrations in water. Thus, if only BAFs based on total water concentrations are reported in a given BAF study, they can be used with information on the organic carbon content of water (from the BAF study, if available) to predict freely dissolved concentrations.

To estimate the freely dissolved concentration, the fraction freely dissolved (f_{fd}) in the above equation must be estimated, using information on the chemical's K_{ow} and both dissolved and particulate organic carbon contents of the water. The equation used to estimate f_{fd} is as follows:

$$f_{fd} = \frac{1}{\left[1 + \left(POC \cdot K_{ow}\right) + \left(DOC \cdot \frac{K_{ow}}{10}\right)\right]} \qquad \text{(Equation IIID-15)}$$

Where:

POC = concentration of particulate organic carbon (kg/L)

DOC = concentration of dissolved organic carbon (kg/L)

K_{ow} = n-octanol water partition coefficient for the chemical

Additional information on the derivation of Equation IIID–15 is provided in the TSD.

POC/DOC Values. As noted above, when converting from the total concentration of a chemical to a freely dissolved concentration, the POC and DOC should be obtained from the original study that reports BAFs based on total concentrations of a chemical in water. However, if the POC and DOC concentrations are not reported in the BAF study, then reliable estimates of POC and DOC might be obtained from other studies of the same site used in the BAF study or closely related site(s) within the same water body. When using POC/DOC data from other studies of the same water body, care should be taken to ensure that environmental conditions that may affect POC or DOC concentrations are reasonably similar to those in the BAF study. Additional

guidance on selection of POC and DOC values is provided in the TSD.

K_{ow} Values. The K_{ow} is the octanol-water partition coefficient of a chemical and is defined as the ratio of the concentration of a substance in the n-octanol phase to its concentration in the aqueous phase. Numerous investigations have demonstrated a linear relationship between the logarithm of the BCF and the logarithm of the octanol-water partition coefficient (K_{ow}) for organic chemicals for fish and other aquatic organisms. Isnard and Lambert (1988) list various regression equations that illustrate this linear relationship. The underlying assumption for the linear relationship between the BCF and K_{ow} is that the bioconcentration process can be viewed as a partitioning of a chemical between the lipid of the aquatic organisms and water and that the K_{ow} is an useful surrogate for this partitioning process (Mackay, 1982).

Several of the BAF procedures, including the BSAF method, use of the food chain model, and conversion of total chemical concentrations in water to freely dissolved chemical concentrations, rely on the K_{ow} for chemicals. Because the K_{ow} is used in calculating BAFs, it is important that the most accurate and reliable K_{ow} measurements for a chemical are used. A variety of techniques are available to estimate or predict K_{ow} values, some of which are more or less reliable depending on the K_{ow} of the chemical.

In this Notice, EPA discusses two options on how to select a reliable K_{ow} value. The first option is EPA's existing guidance published in the Great Lakes Water Quality Initiative (60 FR 15366 (March 23, 1995). A second option is more detailed, draft guidance on selecting K_{ow} values which EPA has developed and is undergoing external peer review. The salient features of both the GLWQI K_{ow} selection guidance (option one) and EPA's new, draft guidance (option two) are presented below. Additional details of both approaches are provided in the TSD.

Guidance on selecting reliable values of K_{ow} based on the GLWQI approach (option 1) is as follows.

For chemicals with log K_{ow} <4:

Priority	Technique
1	Slow-stir. Shake-flask. Generator column.
2	Measured value from the CLOGP program.
3	Reverse-phase liquid chromatography on C_{18} with extrapolation to zero percent solvent.
4	Reverse-phase liquid chromatography on C_{18} without extrapolation to zero percent solvent.
5	Calculated by the CLOGP program.

For chemicals with log K_{ow} ≥4:

Priority	Technique
1	Slow-stir, Generator-column.
2	Reverse-phase liquid chromatography on C_{18} with extrapolation to zero percent solvent.
3	Reverse-phase liquid chromatography on C_{18} without extrapolation to zero percent solvent.
4	Shake-flask.
5	Measured value from the CLOGP program.
6	Calculated by the CLOGP program.

If no measured K_{ow} is available, then the K_{ow} must be estimated using the CLOGP program.

Several general points should be kept in mind when using K_{ow} values. Values should be used only if they were obtained from the original authors or from a critical review that supplied sufficient information. If more than one K_{ow} value is available for a chemical using the highest priority method, then the arithmetic mean of the available log K_{ow}s or the geometric mean of the available K_{ow}s may be used. Because of potential interference due to radioactivity associated with impurities, values determined by measuring radioactivity in water and/or octanol should be considered less reliable than values determined by a K_{ow} method of the same priority that employ nonradioactive techniques. The values determined using radioactive methods should be moved down one step in the priority below the values determined using the nonradioactive technique. Because the K_{ow} is an intermediate value in the derivation of a BAF, the value used for the K_{ow} of a chemical should not be rounded to less than three significant digits. K_{ow} values that are outliers compared with other values for a chemical should not be used.

The salient features of EPA's new draft methodology (option 2) for selecting reliable values of K_{ow} is described below.

I. Assemble/evaluate experimental and calculated data (*e.g.*, CLOGP, LOGKOW, SPARC).

II. If calculated log K_{ow} is >8,

A. Develop independent estimates of K_{ow} using:

1. Liquid Chromatography (LC) methods with "appropriate" standards. (See TSD for guidelines for LC application)
2. Structure Activity Relationship (SAR) estimates extrapolated from similar chemicals where "high quality" measurements are available. "High quality" SARs are defined in the TSD
3. Property Reactivity Correlation (PRC) estimates based on other measured properties (solubility, etc.)

B. If calculated data are in reasonable agreement and are supported by independent estimates described above, report the average calculated value. Guidance on determining whether K_{ow} values are in "reasonable agreement" are presented in the TSD.

C. If calculated/estimated data do not agree, use professional judgment to evaluate/blend/weight the calculated and estimated data to assign K_{ow} value.

D. Document rationale including relevant statistics.

III. If calculated log K_{ow} ranges from 6–8,

A. Look for "high quality" measurements. These will generally be slow stir measurements, the exception being certain classes of compounds where micro emulsions tend to be less of a problem (i.e., PNA's, shake flask measurements are good to log K_{ow} of 6.5).

B. If measured data are available and are in reasonable agreement (both measurements and calculations), report average measured value.

C. If measured data are in reasonable agreement, but differ from calculated values, develop independent estimates and apply professional judgment to evaluate/blend/weight the measured, calculated and estimated data to assign K_{ow} value.

D. If measured data are not in reasonable agreement (or if only one measurement is available), use II A, B, and C to produce a "best estimate"; use this value to evaluate/screen the measured K_{ow} data. Report the average value of screened data. If no measurements reasonably agree with "best estimate", apply professional judgment to evaluate/blend/weight the measured, calculated and estimated data to assign K_{ow}.

E. If measured data are unavailable, proceed through II A, B, C and report the "best estimate".

F. Document rationale including relevant statistics.

IV. If calculated log K_{ow} is <6,

A. Proceed as in III. Slow stir is the preferred method but shake flask data can be considered for all chemicals if sufficient attention has been given to emulsion problems in the measurement.

The general operational guidelines for EPA's new draft methodology for selecting K_{ow} values are as follows:

1. For chemicals with log K_{ow} >5, it is highly unlikely to find multiple "high quality" measurements. (Note: "high quality" is data judged to be reliable based on the guidelines presented in the TSD).

2. "High Quality" measured data are preferred over estimates, but due to the scarcity of "high quality" data, the use of estimates is important in assigning K_{ow}'s.

3. K_{ow} measurements by slow stir are extendable to 10^8. Shake flask K_{ow} measurements are extendable to 10^6 with sufficient attention to micro emulsion effects; for classes of chemicals that are not highly sensitive to emulsion effects (i.e., PNA's) this range may extend to $10^{6.5}$.

4. What is to be considered reasonable agreement in log K_{ow} data (measured or estimated) depends primarily on the log K_{ow} magnitude. The following standards for data agreement have been set for this guidance: 0.5 for log K_{ow} >7; 0.4 for 6 ≤log K_{ow} ≤7; 0.3 for log K_{ow} <6.

5. Statistical methods should be applied to data as appropriate but application is limited due to the scarcity of data, and the determinate/methodic nature of most measurement error(s).

The various techniques for measuring or calculating K_{ow} that are referenced in both approaches above are summarized as follows:

■ The slow-stir method requires adding the test chemical to a reaction flask which contains a water and octanol phase. The chemical partitions to these two phases under conditions of slow stirring the flask. After the phases are allowed to separate, the concentration of the test chemical in each phase is determined (Brooke et al., 1986).

■ The shake-flask method also involves adding the chemical to a reaction flask with a mixture of octanol and water. In this method, however, the flask is shaken to obtain partitioning of the chemical between the octanol and water phases.

■ The generator-column method involves filling a column with an inert material (silanized Chromosorb W or glass beads) that is coated with water-saturated octanol and contains the test chemical. Pumping water through the column results in an aqueous solution in equilibrium with the octanol phase. The water that leaves the column is extracted with specifically either an organic solvent or a C_{18} column that is then eluted with hexane or methanol (DeVoe et al., 1981; Woodburn et al., 1984; Miller et al., 1984).

■ The reverse-phase liquid chromatography method involves adding the test chemical in a polar mobile phase (such as water or water-methanol) to a hydrophobic porous stationary phase (the C_{18} *n*-alkanes covalently bound to a silica support). The chemical partitions between the column and the polar aqueous phase. K_{ow} values are estimated from linear equations between the K_{ow} and retention indices that are derived for reference chemicals (Konemann et al., 1979; Veith et al., 1979; McDuffie, 1981; Garst and Wilson, 1984).

■ The CLOGP Program is a computer program that contains measured K_{ow} values for some chemicals and can calculate K_{ow} values for additional chemicals based on similarities in their chemical structure with measured K_{ow} values. The method used to calculate the K_{ow} values is described in Hansch and Leo (1979).

■ LOGKOW is essentially an expanded CLOGP with more recent training data and additional fragment constants. The developers were Philip Howard, William Meylan and co-workers at Syracuse Research Corporation. (See Meylan and Howard, 1994, for model details and performance information.)

■ SPARC (SPARC Performs Automated Reasoning in Chemistry) is a mechanistic model developed at the Ecosystems Research Division of the National Exposure Research Laboratory of the Office of Research and Development of the U.S. Environmental Protection Agency by Sam Karickhoff, Lionel Carreira, and co-workers.

In some situations, available data may require determination of a single K_{ow} value for a class of chemicals or a mixture of closely related chemicals (*e.g.*, when toxicity data are class- or mixture-specific). However, it is not possible to determine experimentally a valid K_{ow} for a substance that is a mixture of chemicals (*e.g.*, PCBs, toxaphene, chlordane). For calculating the composite freely dissolved fraction used to adjust a composite total BAF to a composite baseline BAF, a composite K_{ow} value for the mixture can be calculated based on the sum of the total concentrations of the mixture components in water (*e.g.*, individual congeners for PCBs), the sum of the dissolved concentrations of the mixture components in water, and the DOC and POC from the site for which the BAF was measured. An example of determining a composite K_{ow} for deriving BAFs and AWQC for PCBs under the Great Lakes Water Quality Initiative is provided in 62 FR 117250 (March 12, 1997). Additional details on this methodology are also provided in the TSD.

Fraction lipid (f_l)—lipid normalization of data. For lipophilic nonpolar organic chemicals, BAFs and BCFs are assumed to be directly proportional to the percent lipid in the edible tissue or whole body of the organism of interest. For example, an organism with two percent lipid content would be expected to accumulate twice the amount of a chemical as an organism with one percent lipid content, all else being equal. The proportionality of accumulation with lipid content for nonpolar organic chemicals has been extensively evaluated in the literature (Mackay, 1982; Connell, 1988; Barron, 1990) and is generally accepted. Different aquatic organisms, however, have different lipid contents thus making it difficult to compare BAFs and BCFs. BAFs and BCFs that have been measured in aquatic organisms that have different lipid contents can be compared by normalizing the lipids between organisms. The lipid values can be normalized by dividing the BAF or BCF by the mean lipid fraction in the tissue of the aquatic organism sampled. For example, if the BAF for a given chemical and tissue of an aquatic organism was determined to be 5,000 L/kg and the percent lipid in this tissue was 5 percent, the lipid-normalized BAF would be 100,000 L/kg-lipid (*i.e.*, 5,000/0.05).

Since lipid content is known to vary from one tissue to another and from one aquatic species to another, EPA recommends the percent lipid used to normalize the BAF or BCF (whole body or edible tissue) be obtained from the BAF or BCF study. Unless comparability can be determined across organisms, the fraction lipid should be determined in the test organism.

(b) Baseline BAF Derived from BSAFs. When acceptable field-measured values of the BAF are not available for a nonpolar organic chemical, EPA recommends the use of the BSAF methodology to predict the BAF as the second method in the BAF data preference hierarchy. Although BSAFs may be used for measuring and predicting bioaccumulation directly from concentrations of chemicals in surface sediment, they may also be used to estimate BAFs (USEPA, 1993), as described below. Since BSAFs are based on field data and incorporate effects of metabolism, biomagnification, growth, and other factors, BAFs estimated from BSAFs will incorporate the net effect of all these factors. The BSAF approach is particularly beneficial for developing water quality criteria for chemicals

which are detectable in fish tissues and sediments, but are difficult to measure in the water column and have reduced bioaccumulation potential due to metabolism.

In previously promulgated guidance, ratios of BSAFs of polychlorinated dibenzodioxins and polychlorinated dibenzofurans to a BSAF for 2,3,7,8-tetrachlorodibenzo-*p*-dioxin (TCDD) were used for evaluation of TCDD toxic equivalency associated with complex mixtures of these chemicals (i.e., bioaccumulation equivalency factors, see 60 FR 15366). This approach is applicable to calculation of BAFs from BSAFs for other organic chemicals. The approach of estimating BAFs from BSAFs requires data from a steady-state (or near steady-state condition) between sediment and water for both a reference chemical "r" with a measured BAF and other chemicals "n=i" for which BAFs are to be determined. The baseline BAF derived from a BSAF for a chemical "i" can be calculated using the following equation:

$$\left(\text{Baseline } BAF_1^{fd}\right)_i = \left(\text{Baseline } BAF_1^{fd}\right)_r \cdot \left(\frac{(BSAF)_i \cdot (K_{ow})_i}{(BSAF)_r \cdot (K_{ow})_r}\right) \qquad \text{(Equation IIID-16)}$$

Where:

$(\text{Baseline } BAF_l{}^{fd})_i$=BAF expressed on a freely dissolved and lipid-normalized basis for chemical of interest "i"

$(\text{Baseline } BAF_l{}^{fd})_r$=BAF expressed on a freely dissolved and lipid-normalized basis for reference chemical "r"

$(BSAF)_i$=Biota-sediment accumulation factor for chemical of interest "i"

$(BSAF)_r$=Biota-sediment accumulation factor for the reference chemical "r"

$(K_{ow})_i$=octanol-water partition coefficient for chemical of interest "i"

$(K_{ow})_r$=octanol-water partition coefficient for the reference chemical "r"

Field-measured BSAFs. As shown in the following equation, BSAFs are determined by relating lipid-normalized concentrations of chemicals in an organism (C_l) to organic carbon-normalized concentrations of the chemicals in surface sediment samples associated with the average exposure environment of the organism (C_{soc}).

$$BSAF = \frac{C_l}{C_{soc}} \qquad \text{(Equation IIID-17)}$$

The lipid-normalized concentration of a chemical in an organism is determined by:

$$C_l = \frac{C_t}{f_l} \qquad \text{(Equation IIID-18)}$$

where:

C_t=Concentration of the chemical in the wet tissue (either whole organism or specified tissue) (μg/g)

f_l = Fraction lipid content in the organism

The organic carbon-normalized concentration of a chemical in sediment is determined by:

$$C_{soc} = \frac{C_s}{f_{oc}} \qquad \text{(Equation IIID-19)}$$

where:

C_s=Concentration of chemical in sediment (μg/g sediment)

f_{oc}=Fraction organic carbon in sediment

Differences between BSAFs for different organic chemicals are good measures of the relative bioaccumulation potentials of the chemicals. When calculated from a common organism-sediment sample set, chemical-specific differences in BSAFs primarily reflect the net effect of biomagnification, metabolism, bioenergetics, and bioavailability factors on each chemical's disequilibrium ratio between biota and sediment (i.e., the ratio of the freely dissolved concentration associated with water in the tissue to the freely dissolved concentration associated with the pore water in the sediment). At equilibrium, the disequilibrium (fugacity) ratio between biota and sediment is expected to be 1.0. However, deviations from 1.0 (reflecting disequilibrium) are common and can reflect biomagnification, conditions where surface sediment has not reached equilibrium, kinetic limitations for chemical transfer, or biological processes such as growth or biotransformation. BSAFs are most useful (i.e., most predictable from one site to another) when measured under steady-state conditions. BSAFs measured for systems with new chemical loadings or rapid increases in loadings may be unreliable due to underestimation of steady-state C_{soc}s.

The trophic level to which the baseline BAF applies is the same as the trophic level of the organisms used in the determination of the BSAF. For each trophic level, a species mean baseline BAF is calculated as the geometric mean if more than one acceptable baseline BAF is predicted from BSAFs for a given species. For each trophic level, a trophic level-specific BAF is calculated as the geometric mean of the acceptable species mean baseline BAFs derived using BSAFs.

The following procedural and quality assurance requirements should be met for field-measured BSAFs:

1. The field studies used should be limited to those conducted with fish at or near the top of the aquatic food chain (i.e., in trophic levels 3 and/or 4). In situations where consumption of lower trophic level organisms represents an important exposure route, such as certain types of shellfish at trophic level 2, the field study should also include appropriate target species at this trophic level.

2. Samples of surface sediments (0–1 cm is ideal) should be from locations in which sediment is regularly deposited and is representative of average surface sediment in the vicinity of the organism.

3. The K_{ow}s used should be of acceptable quality as described in Section D.6 above.

4. The site of the field study should not be so unique that the resulting BAF cannot be extrapolated to other locations where the criteria and values will apply.

5. The percent lipid should be either measured or reliably estimated for the tissue used in the determination of the BAF.

Further details on these requirements for predicting BAFs from BSAF measurements and the data supporting this approach are provided in the TSD.

(c) Calculation of a Baseline BAF from a Laboratory-Measured BCF and FCM. As the third tier in the data preference hierarchy for nonpolar organic chemicals, EPA recommends the use of a predicted BAF derived from a technically defensible, laboratory measurement of the BCF and an appropriate FCM. Laboratory-measured BCFs are preferred over predicted BCFs because laboratory-measured BCFs inherently account for the effects of any metabolism of the chemical on the BCF. The equation for deriving a baseline BAF expressed on a freely dissolved and lipid-normalized basis using this method is:

$$\text{Baseline } BAF_1^{fd} = (FCM) \cdot \left[\frac{\text{Measured } BCF_T^t}{f_{fd}} - 1 \right] \cdot \left(\frac{1}{f_1} \right) \qquad \text{(Equation IIID-20)}$$

Where:

Baseline $BAF^{fd/}$ = BAF expressed on a freely dissolved and lipid-normalized basis for a given trophic level

Measured BCF^t_T = BCF based on total concentration in tissue and water

f^l = Fraction of the tissue that is lipid

f_{fd} = Fraction of the total chemical in the test water that is freely dissolved

FCM = The food-chain multiplier either obtained from Tables IIID–1, IIID–2, or IIID–3 by linear interpolation for the appropriate trophic level, or from appropriate field data

For each trophic level, the species mean baseline BAF is calculated as the geometric mean if more than one acceptable baseline BAF is predicted from laboratory-measured BCFs for a given species. For each trophic level, the trophic level-specific BAF is calculated as the geometric mean of the species mean baseline BAFs based on laboratory-measured BCFs.

Measured BCF ^t_T. To estimate a measured BCF^t_T, information is needed on the total concentration of the chemical in the tissue of the organism and the total concentration of the chemical in the laboratory test waters. The equation to derive a measured BCF^t_T is:

$$\text{Measured } BCF_T^t = \frac{\text{Total concentration of chemical in tissue}}{\text{Total concentration of chemical in test water}} \qquad \text{(Equation IIID-21)}$$

A BCF derived from results of a laboratory exposure study is acceptable if the study has met certain specific technical criteria. These criteria include, but are not limited to:

1. The test organism should not be diseased, unhealthy, or adversely affected by the concentration of the chemical because these attributes may alter accumulation of chemicals by otherwise healthy organisms.

2. The total concentration of the chemical in the water should be measured and should be relatively constant during the steady-state time period.

3. The organisms should be exposed to the chemical using a flow-through or renewal procedure.

4. For organic chemicals, the percent lipid should be either measured or reliably estimated for the tissue used in the determination of the BCF.

5. For organic chemicals with log K_{ow} greater than four, the concentrations of POC and DOC in the test solution should be either measured or reliably estimated. For organic chemicals with log K_{ow} less than four, virtually all of the chemical is predicted to be freely dissolved, except in water with extremely high DOC and POC concentrations, which is not characteristic of laboratory dilution water used in BCF determinations.

6. Laboratory-measured BCFs should be determined using fish species, but BCFs determined with molluscs and other invertebrates may be used with caution. For example, because invertebrates metabolize some chemicals less efficiently than vertebrates, a baseline BCF determined for such a chemical using invertebrates is expected to be higher than a comparable baseline BCF determined using fish.

7. If laboratory-measured BCFs increase or decrease as the concentration of the chemical increases in the test solutions in a bioconcentration test, the BCF measured at the lowest test concentration that is above concentrations existing in the control water should be used (i.e., a BCF should not be calculated from a control treatment). The concentrations of an inorganic chemical in a bioconcentration test should be greater than normal background levels and greater than levels required for normal nutrition of the test species if the chemical is a micronutrient, but below levels that adversely affect the species. Bioaccumulation of an inorganic chemical might be overestimated if concentrations are at or below normal background levels due to, for example, nutritional requirements of the test organisms.

8. For inorganic chemicals, BCFs should be used only if they are expressed on a wet weight basis. BCFs reported on a dry weight basis cannot be converted to wet weight unless a conversion factor is measured or reliably estimated for the tissue used in the determination of the BAF.

9. BCFs for organic chemicals may be based on measurement of radioactivity only when the BCF is intended to include metabolites, when there is confidence that there is no interference due to metabolites, or when studies are conducted to determine the extent of metabolism, thus allowing for a proper correction.

10. The calculation of the BCF must appropriately address growth dilution, which can be particularly important in affecting BCF determinations for poorly depurated chemicals.

11. Other aspects of the methodology used should be similar to those described by the American Society of Testing and Materials (ASTM, 1990).

In addition, the magnitude of the octanol-water partition coefficient (K_{ow}) and the availability of corroborating BCF data should be considered. For example, some chemicals with high log K_{ow}s may require longer than 28 days to obtain steady state conditions between the organism and the water column.

FCMs. The FCM reflects a chemical's tendency to biomagnify in the aquatic food web. Food chain multipliers in Tables IIID–1, IIID–2 and IIID–3 have been calculated as the ratio of the baseline BAFs for various trophic levels to the baseline BCF using the model of Gobas (1993). Values of FCMs greater than 1.0 indicate biomagnification and typically apply to organic chemicals with log K_{ow} values between 4.0 and 9.0. For a given chemical, FCMs tend to be greater at higher trophic levels, although FCMs for trophic level three can be higher than those for trophic level four. The final GLI established FCMs using the food chain model by Gobas (1993) for a range of log K_{ow} values from 2.0 to 9.0 at intervals of a tenth of a log K_{ow} value.

EPA recommends using the biomagnification model by Gobas (1993) to derive FCMs for nonpolar organic chemicals for several reasons. First, the Gobas model includes both benthic and pelagic food chains, thereby incorporating exposure of organisms to chemicals from both the sediments and the water column. Second, the input data needed to run the model can be readily defined. Third, the predicted BAFs using the model are in agreement

with field-measured BAFs for chemicals, even those with very high log K_{ow}s. Finally, the model predicts chemical residues in benthic organisms using equilibrium partitioning theory, which is consistent with EPA's sediment quality criteria effort.

The Gobas model requires input of specific data on the structure of the food chain and the water quality characteristics of the water body of interest. For example, in the GLI and in these proposed revisions to the AWQC methodology, it is assumed that the food chain consists of four trophic levels. Trophic level 1 is phytoplankton, trophic level 2 is zooplankton, trophic level 3 is forage fish (*e.g.*, sculpin and smelt), and trophic level 4 are predator fish (*e.g.*, salmonids). Additional assumptions must be made regarding the composition of the aquatic species diet (*e.g.*, salmonids consume 10 percent sculpin, 50 percent alewives, and 40 percent smelt), the physical parameters of the aquatic species (*e.g.*, lipid values), and the water quality characteristics (*e.g.*, water temperature, sediment organic carbon).

EPA has estimated FCMs using three different potential food web structures. The first food web structure includes both a benthic and pelagic food chains. The FCMs range from 1.00 to about 27 for log K_{ow} values ranging from 2.0 to 9.0. The second food web structure includes only the pelagic food chain. The FCMs for this food web structure range from 1.0 to about 4 for log K_{ow} values ranging from 2.0 to 9.0. Finally, the third food web structure includes only the benthic food chain. The FCMs for this scenario range from 1.0 to about 57 for log K_{ow} values ranging from 2.0 to 9.0. The resulting FCMs for trophic levels 2, 3, and 4 are included in Tables IIID–1, IIID–2, and IIID–3. A more detailed discussion on the model and the input parameters for the model are included in the TSD for BAFs.

In addition to determining FCMs for organic substances using the Gobas (1993) model, EPA also recommends the use of FCMs derived from field data where data are sufficient to enable scientifically valid and reliable determinations to be made. Currently, field-measured FCMs are the only method recommended for estimating FCMs for inorganic chemicals because appropriate model-derived estimates are not yet available (see Section D.8). Similarly, field-measured FCMs can also be determined for organic chemicals. Compared to the model-based FCMs described previously, properly derived field-based FCMs may offer some advantages in some situations. For example, field-measured FCMs rely on measured contaminant concentrations in tissues of biota and therefore inherently account for any contaminant metabolism which may occur. Field-measured FCMs may also be useful for estimating BAFs for some highly hydrophobic contaminants whose water column concentrations are very difficult to determine with accuracy and precision. Furthermore, field-measured FCMs may better reflect local conditions that can influence bioaccumulation, such as differences in food web structure, exposure pathways, water body type, and target species. Finally, use of field-measured FCMs in estimating BAFs may enable existing data on contaminant concentrations in aquatic organisms to be used in situations where companion water column data are unavailable or are judged to be unreliable for derivation of a BAF.

TABLE IIID–1. FOOD-CHAIN MULTIPLIERS FOR TROPHIC LEVELS 2, 3 & 4

[Pelagic and Benthic Structure]

Log K_{ow}	Trophic Level 2	Trophic Level 3	Trophic Level 4
≤2.0	1.000	1.000	1.000
2.0	1.000	1.005	1.000
2.5	1.000	1.010	1.002
3.0	1.000	1.028	1.007
3.1	1.000	1.034	1.007
3.2	1.000	1.042	1.009
3.3	1.000	1.053	1.012
3.4	1.000	1.067	1.014
3.5	1.000	1.083	1.019
3.6	1.000	1.103	1.023
3.7	1.000	1.128	1.033
3.8	1.000	1.161	1.042
3.9	1.000	1.202	1.054
4.0	1.000	1.253	1.072
4.1	1.000	1.315	1.096
4.2	1.000	1.380	1.130
4.3	1.000	1.491	1.178
4.4	1.000	1.614	1.242
4.5	1.000	1.766	1.334
4.6	1.000	1.950	1.459
4.7	1.000	2.175	1.633
4.8	1.000	2.452	1.871
4.9	1.000	2.780	2.193
5.0	1.000	3.181	2.612
5.1	1.000	3.643	3.162
5.2	1.000	4.188	3.873
5.3	1.000	4.803	4.742
5.4	1.000	5.502	5.821
5.5	1.000	6.266	7.079
5.6	1.000	7.096	8.551
5.7	1.000	7.962	10.209
5.8	1.000	8.841	12.050
5.9	1.000	9.716	13.964
6.0	1.000	10.556	15.996
6.1	1.000	11.337	17.783

TABLE IIID–1. FOOD-CHAIN MULTIPLIERS FOR TROPHIC LEVELS 2, 3 & 4—Continued

[Pelagic and Benthic Structure]

Log K_{ow}	Trophic Level 2	Trophic[a] Level 3	Trophic Level 4
6.2	1.000	12.064	19.907
6.3	1.000	12.691	21.677
6.4	1.000	13.228	23.281
6.5	1.000	13.662	24.604
6.6	1.000	13.980	25.645
6.7	1.000	14.223	26.363
6.8	1.000	14.355	26.669
6.9	1.000	14.388	26.669
7.0	1.000	14.305	26.242
7.1	1.000	14.142	25.468
7.2	1.000	13.852	24.322
7.3	1.000	13.474	22.856
7.4	1.000	12.987	21.038
7.5	1.000	12.517	18.967
7.6	1.000	11.708	16.749
7.7	1.000	10.914	14.388
7.8	1.000	10.069	12.050
7.9	1.000	9.162	9.840
8.0	1.000	8.222	7.798
8.1	1.000	7.278	6.012
8.2	1.000	6.361	4.519
8.3	1.000	5.489	3.311
8.4	1.000	4.683	2.371
8.5	1.000	3.949	1.663
8.6	1.000	3.296	1.146
8.7	1.000	2.732	0.778
8.8	1.000	2.246	0.521
8.9	1.000	1.837	0.345
9.0	1.000	1.493	0.226

[a] The FCMs for trophic level 3 are the geometric mean of the FCMs for sculpin and alewife.

TABLE IIID–2. FOOD-CHAIN MULTIPLIERS FOR TROPHIC LEVELS 2, 3 & 4

[All Benthic Structure]

Log K_{ow}	Trophic Level 2	Trophic[a] Level 3	Trophic Level 4
<2.0	1.000	1.000	1.000
2.0	1.000	1.009	1.001
2.1	1.000	1.010	1.001
2.2	1.000	1.011	1.001
2.3	1.000	1.013	1.002
2.4	1.000	1.015	1.002
2.5	1.000	1.018	1.002
2.6	1.000	1.022	1.003
2.7	1.000	1.026	1.003
2.8	1.000	1.032	1.004
2.9	1.000	1.039	1.005
3.0	1.000	1.048	1.006
3.1	1.000	1.060	1.008
3.2	1.000	1.074	1.010
3.3	1.000	1.092	1.013
3.4	1.000	1.114	1.017
3.5	1.000	1.142	1.022
3.6	1.000	1.177	1.029
3.7	1.000	1.222	1.039
3.8	1.000	1.277	1.053
3.9	1.000	1.347	1.072
4.0	1.000	1.433	1.099
4.1	1.000	1.541	1.138
4.2	1.000	1.676	1.195
4.3	1.000	1.843	1.276
4.4	1.000	2.050	1.392
4.5	1.000	2.306	1.559
4.6	1.000	2.620	1.796
4.7	1.000	3.004	2.131
4.8	1.000	3.470	2.595
4.9	1.000	4.032	3.232
5.0	1.000	4.702	4.087

TABLE IIID–2. FOOD-CHAIN MULTIPLIERS FOR TROPHIC LEVELS 2, 3 & 4—Continued

[All Benthic Structure]

Log K_{ow}	Trophic Level 2	Trophic[a] Level 3	Trophic Level 4
5.1	1.000	5.492	5.215
5.2	1.000	6.411	6.668
5.3	1.000	7.462	8.501
5.4	1.000	8.643	10.754
5.5	1.000	9.942	13.457
5.6	1.000	11.337	16.617
5.7	1.000	12.800	20.213
5.8	1.000	14.293	24.192
5.9	1.000	15.774	28.468
6.0	1.000	17.202	32.920
6.1	1.000	18.539	37.405
6.2	1.000	19.753	41.764
6.3	1.000	20.822	45.836
6.4	1.000	21.730	49.472
6.5	1.000	22.469	52.544
6.6	1.000	23.037	54.949
6.7	1.000	23.433	56.610
6.8	1.000	23.659	57.472
6.9	1.000	23.717	57.501
7.0	1.000	23.606	56.679
7.1	1.000	23.326	55.007
7.2	1.000	22.873	52.507
7.3	1.000	22.246	49.227
7.4	1.000	21.443	45.254
7.5	1.000	20.467	40.714
7.6	1.000	19.327	35.780
7.7	1.000	18.040	30.657
7.8	1.000	16.629	25.572
7.9	1.000	15.129	20.744
8.0	1.000	13.580	16.359
8.1	1.000	12.026	12.547
8.2	1.000	10.510	9.368
8.3	1.000	9.068	6.822
8.4	1.000	7.732	4.856
8.5	1.000	6.522	3.387
8.6	1.000	5.448	2.321
8.7	1.000	4.513	1.567
8.8	1.000	3.711	1.045
8.9	1.000	3.032	0.689
9.0	1.000	2.465	0.451

[a] The FCMs for trophic level 3 are the geometric mean of the FCMs for sculpin and alewife.

TABLE IIID–3. FOOD-CHAIN MULTIPLIERS FOR TROPHIC LEVELS 2, 3 & 4

[All Pelagic Structure]

Log K_{ow}	Trophic Level 2	Trophic[a] Level 3	Trophic Level 4
<2.0	1.000	1.000	1.000
2.0	1.000	1.000	1.001
2.1	1.000	1.000	1.001
2.2	1.000	1.000	1.001
2.3	1.000	1.000	1.002
2.4	1.000	1.000	1.002
2.5	1.000	1.001	1.002
2.6	1.000	1.001	1.003
2.7	1.000	1.001	1.003
2.8	1.000	1.001	1.004
2.9	1.000	1.001	1.005
3.0	1.000	1.002	1.006
3.1	1.000	1.002	1.007
3.2	1.000	1.002	1.009
3.3	1.000	1.003	1.011
3.4	1.000	1.004	1.013
3.5	1.000	1.005	1.016
3.6	1.000	1.006	1.021
3.7	1.000	1.007	1.026
3.8	1.000	1.009	1.032
3.9	1.000	1.011	1.040

TABLE IIID–3. FOOD-CHAIN MULTIPLIERS FOR TROPHIC LEVELS 2, 3 & 4—Continued

[All Pelagic Structure]

Log K_{ow}	Trophic Level 2	Trophic[a] Level 3	Trophic Level 4
4.0	1.000	1.014	1.050
4.1	1.000	1.018	1.063
4.2	1.000	1.022	1.078
4.3	1.000	1.028	1.097
4.4	1.000	1.034	1.121
4.5	1.000	1.043	1.150
4.6	1.000	1.053	1.185
4.7	1.000	1.066	1.228
4.8	1.000	1.081	1.280
4.9	1.000	1.099	1.342
5.0	1.000	1.121	1.415
5.1	1.000	1.147	1.502
5.2	1.000	1.176	1.603
5.3	1.000	1.210	1.719
5.4	1.000	1.248	1.851
5.5	1.000	1.289	1.999
5.6	1.000	1.333	2.162
5.7	1.000	1.379	2.337
5.8	1.000	1.425	2.521
5.9	1.000	1.471	2.711
6.0	1.000	1.514	2.900
6.1	1.000	1.554	3.083
6.2	1.000	1.589	3.254
6.3	1.000	1.619	3.407
6.4	1.000	1.643	3.536
6.5	1.000	1.660	3.637
6.6	1.000	1.671	3.705
6.7	1.000	1.674	3.738
6.8	1.000	1.669	3.733
6.9	1.000	1.657	3.688
7.0	1.000	1.636	3.602
7.1	1.000	1.606	3.474
7.2	1.000	1.567	3.305
7.3	1.000	1.518	3.094
7.4	1.000	1.458	2.848
7.5	1.000	1.389	2.570
7.6	1.000	1.308	2.270
7.7	1.000	1.219	1.958
7.8	1.000	1.122	1.647
7.9	1.000	1.020	1.349
8.0	1.000	0.915	1.076
8.1	1.000	0.810	0.835
8.2	1.000	0.707	0.631
8.3	1.000	0.610	0.466
8.4	1.000	0.520	0.336
8.5	1.000	0.438	0.237
8.6	1.000	0.366	0.164
8.7	1.000	0.303	0.112
8.8	1.000	0.249	0.075
8.9	1.000	0.204	0.050
9.0	1.000	0.166	0.033

[a] The FCMs for trophic level 3 are the geometric mean of the FCMs for sculpin and alewife.

As discussed below and in the TSD, FCMs are related to and can be determined from biomagnification factors (BMF). For example:

$$FCM_{TL2} = BMF_{TL2} \qquad \text{(Equation IIID-22)}$$

$$FCM_{TL3} = (BMF_{TL3})(BMF_{TL2}) \qquad \text{(Equation IIID-23)}$$

$$FCM_{TL4} = (BMF_{TL4})(BMF_{TL3})(BMF_{TL2}) \qquad \text{(Equation IIID-24)}$$

Where:

FCM=Food chain multiplier for designated trophic level (TL2, TL3, or TL4)

BMF=Biomagnification factor for designated trophic level (TL2, TL3, or TL4)

The basic difference between FCMs and BMFs is that FCMs relate back to trophic level one (or trophic level two as assumed by the Gobas (1993) model), whereas BMFs always relate back to the next lowest trophic level. For nonpolar organic chemicals, biomagnification factors can be calculated from tissue residue concentrations determined in biota at a site according to the following equation.

$$BMF_{TL2} = (C_{L,TL2})/(C_{L,TL1}) \quad \text{(Equation IIID-25)}$$

$$BMF_{TL3} = (C_{L,TL3})/(C_{L,TL2}) \quad \text{(Equation IIID-26)}$$

$$BMF_{TL4} = (C_{L,TL4})/(C_{L,TL3}) \quad \text{(Equation IIID-27)}$$

Where:

C=Lipid-normalized concentration of chemical in tissue of appropriate biota that occupy the specified trophic level (TL2, TL3, or TL4).

For inorganic chemicals, BMFs are determined as shown above, except that tissue concentrations expressed on a wet-weight basis and are not lipid normalized. In calculating field-derived BMFs for determining FCMs, care must be taken to ensure that the biota upon which they are based actually represent functional predator-prey relationships at the study site, and therefore, would accurately reflect any biomagnification that may occur at the site.

As with field-measured BAFs, the potential advantages of using field data for estimating bioaccumulation can be offset by improper collection and use of information. In calculating field-based FCMs, steps similar to those recommended for determining field-measured BAFs need to be taken to ensure that the resulting FCMs accurately represent potential exposures to the target population at the site(s) of interest. Some of the general procedural and quality assurance requirements that are important for determining field-measured FCMs include:

1. A food web analysis should be conducted for the site from which the tissue concentration data are to be determined (or have been already been determined) to identify the appropriate trophic levels for the aquatic organisms and appropriate predator-prey relationships. To assist in trophic level determinations, EPA is in the process of finalizing its draft trophic level and exposure analysis documents (U.S. EPA, 1995b; 1995c, 1995d) which include trophic level analyses of numerous species in the aquatic-based food web.

2. The aquatic organisms sampled from each trophic level should reflect the most important exposure pathways leading to human exposure via consumption of aquatic organisms. For higher trophic levels (e.g., 3 and 4), aquatic species should also reflect those that are commonly consumed by humans.

3. Collection of tissue concentration field data for a specific site for which criteria are to be derived and with the specific species of concern are preferred.

4. If data cannot be collected from every site for which criteria are to be derived, the site of the field study should not be so unique that the FCM values cannot be extrapolated to other locations where the criteria and values will apply.

5. Samples of the appropriate resident species and the water in which they reside should be collected and analyzed using appropriate, sensitive, accurate, and precise methods to determine the concentrations of bioaccumulative chemicals present in the tissues.

6. For organic chemicals, the percent lipid should be either measured or reliably estimated for the tissue used in the determination of the lipid normalized concentration in the organism's edible tissues.

7. The tissue concentrations should reflect average exposure over the time period required to achieve steady-state conditions for the contaminant in the target species.

(d) Calculation of a Baseline BAF from a K_{ow} and FCM. As the fourth tier in the data preference hierarchy for nonpolar organic chemicals (e.g., when acceptable, field-measured BAFs, BSAFs, or laboratory-measured BCFs are unavailable), EPA recommends the use of the K_{ow} for a chemical and a FCM for estimating baseline BAFs at various trophic levels. For each trophic level, a predicted baseline BAF can be calculated as:

Where:

Baseline BAF^{fd}=BAF expressed on a freely dissolved and lipid-normalized basis for a given trophic level

FCM=The food-chain multiplier obtained from tables IIID–1 to IIID–3 by linear interpolation (or from appropriate field data) for the appropriate trophic level

K_{ow}=Octanol-water partition coefficient

This equation is based on the assumption that a baseline BCF is approximately equal to the K_{ow} for the chemical. This equation was used in the final GLI and its derivation is included in the TSD.

$$\text{Baseline } BAF_1^{fd} = (FCM) \cdot (K_{ow}) \quad \text{(Equation IIID-28)}$$

(e) Metabolism. Many organic chemicals that are accumulated by aquatic organisms are transformed to some extent by the organism's metabolic processes, but the rate of metabolism varies widely across chemicals and species. For most organic chemicals, metabolism increases the depuration rate and reduces the BAF. Field-measured BAFs and BSAFs automatically take into account any metabolism that occurs and therefore more accurately predict bioaccumulation than predicted BAFs based on laboratory measurements. Because of the uncertainties associated with predicting chemical metabolism, EPA prefers that the bioaccumulation

potential of a chemical be determined based on field data. Predicted BAFs obtained by multiplying laboratory-measured BCFs by a field-measured FCM also take into account chemical metabolism if it occurs. Predicted BAFs that are obtained by multiplying a laboratory-measured BCF by a model-derived FCM take into account the effect of metabolism on the BCF, but do not take into account the effect of metabolism on the FCM. Predicted BAFs that are obtained by multiplying a predicted BCF by a FCM make no allowance for metabolism.

EPA is aware that for some chemical classes, such as PAHs, metabolism can have a significant effect on the bioaccumulation for the chemical. Unfortunately, EPA is not aware of any generalized approach for predicting the effects of metabolism. For this reason, EPA suggests that BAFs be reviewed for consistency with all available data concerning bioaccumulation of a chemical. In particular, information on metabolism, molecular size, or other physicochemical properties which might enhance or inhibit bioaccumulation should be considered.

7. BAFs Used in Deriving AWQC

After the baseline BAF has been derived for a nonpolar organic chemical using one of the four methods described above, the next step is to calculate a BAF that will be used in the derivation of AWQC. This requires information on: (1) the baseline BAF for the chemical of interest using one of the four methods described above; (2) the percent lipid of the aquatic organisms consumed by humans at the site of interest; and (3) the freely dissolved fraction of the chemical in the ambient water of interest. For each trophic level, the equation for calculating a BAF for use in deriving the AWQC is:

$$\text{BAF for AWQC}_{(TL\,n)} = [(\text{Baseline BAF}_1^{fd})_{TL\,n} \cdot (f_1)_{TL\,n} + 1] \cdot (f_{fd}) \qquad \text{(Equation IIID-29)}$$

Where:

Baseline BAF_f^d = BAF expressed on a freely dissolved and lipid-normalized basis for trophic level "n"

$f_{l(TLn)}$ = Fraction lipid of aquatic species consumed at trophic level "n"

f_{fd} = Fraction of the total chemical in water that is freely dissolved

Baseline BAF. The baseline BAFs used in this equation are those derived from the equations presented in Section D.6 above.

Lipid Content of Aquatic Species Consumed by Humans. As discussed above, the percent lipid of the aquatic species consumed by humans is needed when deriving BAFs for a chemical that will be used for deriving AWQC. This information is needed to provide an accurate characterization of the potential exposure to a chemical from ingestion of aquatic organisms. The percent lipid fraction used when calculating a BAF should, if possible, be weighted by the consumption rate of those aquatic species consumed by the target population (e.g., general population, sport anglers, subsistence fishers). A consumption-weighted percent lipid is recommended because it provides a more accurate characterization of the potential exposure to humans than simply averaging lipid values from a variety of species in a given geographic area which may or may not be eaten by humans. Since baseline BAFs are determined for each trophic level and must be adjusted to reflect the lipid content of consumed aquatic species, EPA recommends that the consumption-weighted lipid content of consumed aquatic organisms also be determined for each trophic level. For each trophic level, the consumption-weighted fraction lipid can be determined by the following equation:

$$f_1 = \sum \left[\frac{CR_i}{CR_{tot}} \cdot f_{1,i} \right] \qquad \text{(Equation IIID-30)}$$

where:

$f7_l$ = Lipid fraction representative of aquatic species at a given trophic level eaten by the target population

CR 5_i = Consumption rate of species "i" of a given trophic level eaten by the target population

CR 5_{tot} = Consumption rate of all species at that same trophic level eaten by the target population

$f5_{l,I}$ 5= Lipid fraction of species "i" eaten by the target population

If sufficient information is not available to derive trophic level-specific lipid contents, then States and Tribes may choose to calculate an overall consumption-weighted lipid content value that combines data across relevant trophic levels.

To estimate the consumption-weighted percent lipid content of consumed aquatic species within various trophic levels, information is needed on: (1) the type and quantity of aquatic biota consumed by humans, (2) the trophic position of those species, and (3) the percent lipid of the aquatic biota consumed by humans. The types and quantity of aquatic species eaten by individuals differ throughout the United States. Thus, to determine the lipid content of the aquatic species of interest (e.g., freshwater and estuarine finfish and shellfish) eaten by local populations, EPA recommends that States use available local information on consumption rates specific to the types and quantity of aquatic species eaten by target populations. Data on consumption rates of species may be available from fish and shellfish consumption surveys conducted within the State or in States or regions that have similar finfish and shellfish species. EPA has published the document *Consumption Surveys for Fish and Shellfish. A Review and Analysis of Survey Methods* (Feb. 1992, EPA 822/R–92–001) which may assist in conducting and analyzing the results of such surveys. If local data on species-specific consumption rates are not available, States may wish to use regional data on consumption rates of aquatic species found in fresh and estuarine waters, available from USDA's CSFII (USEPA, 1998). These regional data from the CSFII are presented in the TSD accompanying this Notice. Such data may be used with local data on lipid contents of the consumed aquatic species.

The second type of information required is data on the trophic level of consumed aquatic species corresponding to the consumption rate survey. In order to estimate trophic position, information on the dietary preferences of the organisms of interest is required. The dietary composition (and trophic level) of aquatic organisms can vary with the size and age of the organism, the type of ecosystem, season, and other factors, which can complicate precise determinations of trophic level status. Therefore, whenever possible, it is recommended that information on such attributes (particularly size of consumed organisms) be obtained from the consumption survey. EPA has developed draft guidance on estimating trophic status of numerous aquatic species, in addition to the wildlife that consume them, which is currently being finalized (USEPA 1995b; 1995c; 1995d). Once finalized, this guidance is recommended in situations where sufficient local information on trophic status is not available.

The third critical piece of information is the percent lipid values of the aquatic biota consumed by humans. The lipid content of a particular aquatic species may vary by geographic region, possibly a result of different dietary composition. Therefore, lipid values based on good-quality data from species consumed by the local population of interest are more appropriate than nationally derived values. If local data on both aquatic species consumption rates and lipid contents are not available, States may wish to use national default lipid values calculated by EPA. Using the general relationship in Equation IIID–30 and information on national finfish and shellfish consumption rates at various trophic levels, EPA has developed a national default consumption- weighted mean lipid values of 2.3% at trophic level 2, 1.5% at trophic level 3, and 3.1% at trophic level 4 (rounded to two significant digits for convenience).

It should be noted that if a national default lipid value was determined based only on the species with the highest mean lipid content within each CSFII species category and trophic level (e.g., giving 100 percent of the weighting to lake trout which has the highest lipid content among the species in the trout category), the resulting consumption-weighted lipid values are 3.0% at trophic level 2, 2.2% at trophic level 3, and 6.2% at trophic level 4. The reason that there is not greater difference between the mean and high estimates of the default lipid values within each trophic level is probably due to the fact that the national mean consumption rates in the CSFII survey are weighted heavily by relatively lean aquatic organisms such as shrimp, crab, perch, and flounder. Because local or regional consumption patterns may deviate from national norms, it is further recommended that local and regional data on consumption patterns be used whenever available. When such local consumption data are used, however, information on lipid content of those locally-consumed species is also required (national default consumption-weighted lipid content values do not necessarily apply to local consumption data). Additional description of the data and methods to derive the default lipid values are provided in the TSD accompanying this Notice.

Freely Dissolved Fraction. Equation IIID–15 for estimating the fraction freely dissolved for baseline BAFs is also used here. In this case, however, the POC and DOC values should be based on the site where the BAF and the criterion will be applied and not where the samples were collected. If the POC and DOC values are not available for that site, then data from sites expected to be similar to those to which the AWQC is being applied can be used. If such data are unavailable, then the default values for POC and DOC can be used. EPA has developed national default values of 0.48 mg/L (4.8×10^{-7} kg/L) for POC and 2.9 mg/L (2.9×10^{-6} kg/L) for DOC. Both of these values are 50th percentile values (medians) based on an analysis of over 132,000 DOC values and 81,000 POC values contained in EPA's STORET data base. These default values reflect the combination of values for streams, lakes and estuaries across the United States. Based on these data, EPA has also derived default values at a more disaggregated level (e.g., for individual States and water body types) which, in some situations, may provide more appropriate estimates of POC and DOC concentrations associated with the field BAF study than the national default medians listed above. Additional description of the STORET DOC/POC data base used to derive the default values, including POC and DOC information presented at a more disaggregated level, is provided in the TSD. The K_{ow} value for the chemical will be the same as used for deriving the baseline BAF for the chemical.

As noted above, standardizing BAFs based on the freely dissolved concentration in water allows a common basis for averaging BAFs from several studies. However, for use in criteria development, these BAFs must be converted back to values based on the total concentration in the water to be consistent with monitored water column and effluent concentrations, which are typically based on total concentrations of chemicals in the water. This is done simply by multiplying the freely dissolved baseline BAF by the fraction of the freely dissolved chemical in water bodies where criteria are to be set, as shown in Equation IIID–29.

8. Inorganic Substances

For inorganic chemicals, either (1) a field-measured BAF; (2) a laboratory-measured BCF multiplied by a field-measured FCM; or (3) a laboratory-measured BCF should be used. These measured values are recommended because no method is available for reliably predicting BCFs or BAFs for inorganic chemicals; BCFs and BAFs vary from one invertebrate to another, from one fish to another, and from one tissue to another. Unlike nonpolar organic chemicals, lipid normalization does not apply. For many inorganic chemicals, the BCF will be equal to the BAF. In other words, for these chemicals there is no measurable bioaccumulation from food or other nonwater sources. There are exceptions however, such as mercury and selenium, which can bioaccumulate substantially.

9. SAB Comments

EPA's Science Advisory Board has reviewed the BAF methodology three times since 1992. In December of 1992, SAB issued the report "Evaluation of the Guidance for the Great Lakes Water Quality Initiative" (EPA–SAB–EPEC/DWC–93–005). The SAB reviewed four technical guidance documents for developing water quality criteria in the Great Lakes Basin as a part of the Proposed Great Lakes Water Quality Initiative including the proposed GLI BAF methodology. The 1992 SAB report stated that:

The subcommittee finds the BAF procedure is more advanced and scientifically credible than existing BCF procedures. The use of the BCF, FCM, and BAF approach appear to be fundamentally sound. However, a major inconsistency exists between field data for some chemicals (Reinert, 1970) and the conceptual model of Thomann (1989) for food chain derived residues. Efforts should be devoted to clarifying and improving the documentation and the issues discussed below with a view to presenting a straight-forward procedure with associated estimates of confidence levels. It is the Subcommittee's opinion that with some modification a credible BAF estimation method can be developed exploiting present knowledge. Based on the SAB comments, EPA revised the BAF methodology and finalized the GLI in March 1995.

The second SAB review occurred as part of the overall review of the Revisions to the AWQC methodology. The SAB provided a report called "Review of the Ongoing Revisions of the Methodology for Deriving National Ambient Water Quality Criteria for the Protection of Human Health" which stated:

We strongly urge the Agency to base AWQC on sound experimental evidence that bioaccumulation does occur, rather than on hypothetical assumptions that bioaccumulation might occur. The Committee believes that the strategy of setting AWQC by measuring contaminant concentrations in certain biota and then applying either a BCF or a BAF to calculate water concentrations may not accurately reflect the complex ways in which the real environment operates. Although we support EPA's efforts to develop well-validated BAFs, for the time being the Committee recommends that the Agency rely more heavily on BCFs rather than BAFs, because

of the higher likelihood of collecting an adequate BCF data base.

Finally, in September 1995, the SAB provided a report to EPA entitled "Commentary on Bioaccumulation Modeling Issues" (SAB–EPEC/DWC–COM–95–006). The report was the result of a April 1994 consultation with the SAB on approaches for estimating bioaccumulation potential of chemicals and to discuss various mass/balance/food web models. The SAB provided general advice on how and when EPA should use mass balance/food web models to estimate bioaccumulation and what research is needed to improve model predictions. The SAB stated:

> In summary, while the Subcommittee agrees that mass balance/food web models such as the Thomann model hold promise for predicting bioaccumulation of certain types of chemicals, we urge the Agency to further field test the models for additional classes of compounds and for additional environmental settings and assess the uncertainties in model prediction prior to their wide-spread application in a regulatory context. Ongoing peer review should be an integral part of this process. Finally, the use of models, no matter how refined, should be augmented by appropriately designed laboratory and field experiments and monitoring.

After careful consideration and review of the SAB's comments, EPA recommends using BAFs in the derivation of AWQC because, for highly lipophilic chemicals, uptake from aquatic organisms is the primary route of exposure. Failing to account for all routes of exposure, including ambient water and diet, would result in criteria which are under protective for a substantial portion of the population. In addition, the data hierarchy proposed above relies upon using the most scientifically sound experimental evidence of bioaccumulation. Specifically, the first and second preference for deriving BAFs for organic chemicals relies on using properly collected and analyzed field data over predicted bioaccumulation factors based on models. However, in the absence of field data for a chemical, EPA believes the use of bioaccumulation models can be used in establishing the regulatory criteria when the models have been properly validated. Using data from the Great Lakes, EPA has evaluated the predictability of BAFs determined from the Gobas model (and those determined from BSAFs). EPA found measured and predicted BAFs to be generally in good agreement when field-measured BAFs are adjusted to account for the lipid and freely dissolved fractions. Additional information on these comparisons is provided in the TSD.

10. Issues for Public Comment

Comments are requested on the following issues in the proposal:

1. Is the suggested hierarchy for developing BAFs appropriate? Are there any alternatives to the four methods that could be used to derive AWQC?

2. Is the procedure for estimating the consumption-weighted default lipid value of 2 percent for aquatic species eaten by humans and the data used for deriving the value appropriate? Are there other data available that could be used to calculate the default lipid value?

3. Are there alternatives to the equation used to derive the freely dissolved fraction of a chemical appropriate? If yes, what data support an alternative approach? Are there scientifically defensible alternatives to EPA's K_{ow}-based estimate of K_{DOC} and K_{POC}?

4. Are the default POC value of 0.48 mg/L and the default DOC value of 2.9 mg/L used in deriving BAFs appropriate as national defaults? Are the water body- and State-specific POC and DOC values provided in the TSD appropriate? Are there additional data that could be used to derive these values?

5. What approaches could be used to account for metabolism in the determination of a BAF and what data are available to support these approaches?

6. What other models are available that could be used to predict FCMs? What are the data that support these models? Is EPA's choice of food web structures used to calculate FCMs appropriate?

7. Is EPA's guidance on selecting reproducible K_{ow} values appropriate? Which of the two options for selecting reproducible K_{ow} values do you consider most appropriate?

8. Should properly derived field-measured FCMs take precedence over FCMs derived using the Gobas (1993) model?

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E. Microbiology

1. Existing Microbiological Criteria

The 1980 AWQC National Methodology did not address microbiological criteria for the protection of human health. However, in 1986 EPA published a document entitled Bacteriological Ambient Water Quality Criteria for Marine and Fresh Recreational Water, which updated and revised bacteriological criteria previously published in 1976 in Quality Criteria for Water.

The microbiological criteria developed in 1986 are based on research conducted on beaches that were officially designated for swimming and had well-defined sources of human fecal pollution. Researchers examined the relationship between swimming-associated gastrointestinal (GI) illness and ambient densities of indicator bacteria. EPA concluded from these studies that measuring the densities of the indicator organism group recommended in the 1976 criteria, the fecal coliform, is inadequate. The enumeration of the recommended indicators is based on analytical procedures described in USEPA (1976). The EPA studies demonstrated that *enterococci* densities correlate far better with swimming illness in both marine and fresh water than fecal coliform densities. Also, *E.coli*, a specific bacterial species included in the fecal coliform group, correlates as well as *enterococci* with GI illness in fresh water but does not correlate as well in marine water.

The recommended densities of indicator organisms (*E.coli* and *enterococci*), upon which the 1986 criteria are based, were calculated to approximate the degree of protection already accepted using fecal coliforms as indicators. The current EPA criteria are as follows:

Fresh water: *E. coli* not to exceed 126/100 ml or *enterococci* not to exceed 33/100 ml;

Marine water: *enterococci* not to exceed 35/100 ml.

These criteria are calculated as the geometric mean of a statistically sufficient number of samples, generally no fewer than five, equally spaced over a 30-day period.

No single sample should exceed a one-sided confidence limit (C.L.) calculated using the following as guidance:

Designated bathing beach: 75% C.L.
Moderate use for bathing: 82% C.L.
Light use for bathing: 90% C.L.
Infrequent use for bathing: 95% C.L.

These confidence limits are based on a site-specific log standard deviation or, if site data are not sufficient to establish a log standard deviation, then using 0.4 as the log standard deviation for both indicators in fresh water. In marine water one would use 0.7 as the log standard deviation.

The quantitative relationship between the rates of swimming-associated health effects (acute GI infection) and bacterial indicator densities was determined using regression analysis. Linear relationships were estimated from data grouped on the basis of summers or trials with similar indicator densities. The data for each summer were analyzed by pairing the geometric mean indicator density for a summer bathing season at each beach with the corresponding swimming- associated GI illness rate for the same summer. The swimming-associated illness rate was determined by subtracting the GI illness rate in non swimmers from that in swimmers. These two variables from multiple beach sites were used to calculate a regression coefficient, y-intercept, and 95 percent confidence intervals for the paired data. In the marine studies, the total number of points for use in regression analysis was increased by collecting trial days with similar indicator densities from each study location and placing them into groups. The swimming-associated illness rate was determined as above, by subtracting non swimmers' illness rate of all the individuals included in the grouped trial days from the swimmers' illness rate during these same grouped trial days.

2. Plans for Future Work

EPA recommends no change at this time in the stringency of its bacterial criteria for recreational waters; existing criteria and methodologies from 1986

will still apply. The Agency plans to conduct national studies on improving indicators together with epidemiology studies for new criteria development.

EPA will consider revising the criteria with the possible inclusion of criteria for other primary-contact waters with reduced swimming or full-body-contact use. The Agency will perform critical evaluation of studies of the health effects of recreational water microbiology. EPA will also form a group of experts from EPA program offices, ORD, and the regions to initiate development of consensus recommendations on the development of policy and criteria methodology, research and implementation strategy for a comprehensive recreational waters program.

The Agency expects to make final recommendation for action as soon as possible. A separate **Federal Register** proposal with revised criteria and methodology is anticipated for publication after improved indicator methods and associated exposure risks are established. In 1997, EPA will approve a new 24-hour enterococcus test for recreational waters that may be used as an alternative to the 48-hour test.

3. SAB Comments

(a) The SAB believes that it would be highly beneficial to establish and implement a multi- organizational working group made up of representatives from EPA, CDC, FDA, academia, the water and wastewater industry, and the public.

(b) The SAB believes that despite the desirability of and need for a comprehensive and integrated approach to ambient water quality, it is unrealistic, perhaps inappropriate, and in all likelihood impossible to address all of the water-related exposure routes of microbial health effects concerns under this regulatory initiative.

(c) The SAB recommends that the process of developing and evaluating water quality criteria for microbes should include microbes causing fecally transmitted diseases other than gastroenteritis. Such a process should also include microbes causing diseases of the skin, respiratory tract, eye, ear, nose, throat, and perhaps other sites of entry and infection.

(d) The current recreational-water quality criteria are neither appropriate for nor transferable to other ambient waters. These criteria were intended to address only those pathogens causing enteric (GI) illness.

(e) The SAB recommends that the likelihood of human exposure to different types of ambient water be the basis for identifying the types of ambient waters for which criteria need to be developed. The need for quality criteria for recreational waters has been established; however, the need for such criteria for some other waters has not been established.

(f) The SAB believes that a risk-based approach to criteria for pathogenic microorganisms in ambient waters is both appropriate and feasible for at least some pathogens. However, the SAB believes that this approach has limited applicability to the quality criteria for microbial pathogens in ambient waters.

(g) The SAB believes that further research has to be done on identifying, characterizing, and measuring the virulence determinants of microbial pathogens; on the factors governing or influencing the expression of these determinants under different environmental conditions; and on the role of other factors in virulence expression, such as host factors.

(h) The SAB believes that the currently approved indicator organisms in beach waters are probably appropriate for the safety of bathing waters against GI disease. The SAB believes that the currently accepted levels of the bacterial indicators are not uniformly and adequately protective of health risks from non-GI pathogens in bathing waters.

(i) The SAB believes that there are candidate alternative indicators worthy of consideration and deserving of investigation for improving ambient-water monitoring.

The EPA Office of Water agrees with the SAB comments for all the above points. The Agency makes the following recommendations:

- Future criteria development should consider the risk of diseases other than gastroenteritis. The nature and significance of other than the classical waterborne pathogens are to some degree tied to the particular type of ambient water.
- EPA needs to consider and evaluate such water-related exposure routes as inhalation and dermal absorption when addressing microbial health effects.
- A new set of indicator organisms may need to be developed for tropical water if it is proven that the current fecal indicators can grow in pristine waters or on plants in the tropics. Some potential alternative indicators to be fully explored are coliphage, other bacteriophage, and Clostridium perfringens.
- Because animal sources of pathogens of concern for human infection such as Giardia, Cryptosporidium, and Salmonella may be waterborne or washed into water and thus become a potential source for infection, they must not be ignored in risk assessment. One possible approach to estimating levels of pathogens from animal sources is to determine the ratios of conventional indicators from human sources and from animal sources. Alternatively, new indicators could be developed that are specific to or can discriminate animal sources. The presence of such indicator pathogens together with a predominance of indicators of animal wastes would help define types of risks.
- EPA needs to develop additional data on secondary infection routes and infection rates from prospective epidemiology studies and outbreaks.
- EPA needs to improve sampling, strategies for recreational water monitoring including consideration of rain fall and pollution events to trigger sampling.

References for Microbiology

USEPA. 1976. Test Methods for Escherichia coli and *Enterococci* in Water by the Membrane Filter Procedure. EPA 600/4–85/076.

F. Other Considerations

1. Minimum Data Considerations

For many of the preceding technical areas, considerations have been presented for data quality in developing toxicological and exposure assessments. For greater detail and discussion of minimum data recommendations, the reader is referred to the TSD which accompanies this **Federal Register** document.

2. Site-Specific Criterion Calculation

The 1980 AWQC National Guidelines allowed for site-specific modifications to reflect local environmental conditions and human exposure patterns. The methodology stated that "local" may refer to any appropriate geographic area where common aquatic environmental or exposure patterns exist. Thus "local" may signify a Statewide, regional, river reach or entire river.

In today's Notice, site-specific criteria may be developed as long as the site-specific data, either toxicological or exposure related is justifiable. For example, a State should use a site-specific fish consumption rate that represents at least the central tendency (median or mean) of the population surveyed (either sport or subsistence, or both). If a site-specific fish consumption rate for sport anglers or subsistence anglers is lower than an EPA default value, it may be used in calculating AWQC. To justify such a level (either

higher or lower than EPA defaults) the State should present survey data it used in arriving at the site-specific fish consumption rate. The same conditions apply to site-specific calculations of BAF, percent fish lipid, or the RSC. In the case of deviations from toxicological values (IRIS values: verified noncancer and cancer assessments), EPA recommends that the data upon which the deviation is based be presented to and approved by the Agency before a criterion is developed.

3. Organoleptic Criteria

The 1980 AWQC National Guidelines provided for the development of organoleptic criteria if organoleptic data were available for a specific contaminant. The methodology also made a clear distinction that organoleptic criteria and toxicity-based criteria are derived from completely different endpoints and that organoleptic criteria have no demonstrated relationship to potential adverse human health effects. The 1992 National Experts Workshop participants and the Great Lakes Committees of the Initiative both recommended EPA to place highest priority on setting toxicity-based criteria, rather than using limited resources to set organoleptic criteria. Both efforts, the GLI and the National Experts Workshop concluded that organoleptic effects, while significant from an aesthetic standpoint, were not a significant health concern and did not merit significant expenditures of time and effort. While it can be argued that organoleptic properties indirectly affect human health (people may drink less water or eat less fish due to objectionable taste or odor), they have not been demonstrated to result in direct adverse effects, such as cancer or other types of toxicity.

In today's Notice, EPA is not recommending a methodology for developing organoleptic criteria, but rather is asking for comment on the following questions: 1. How would organoleptic criteria be used if the Agency were to develop new criteria? (Could they be used in a similar fashion to the secondary standards developed by the Agency's National Drinking Water program?) 2. Would organoleptic criteria ultimately be counterproductive if they are much lower than toxicity-based criteria?

4. Criteria for Chemical Classes

The 1980 AWQC National Guidelines allowed for the development of criteria for chemical classes. A chemical class was defined as any group of chemical compounds which were reviewed in a single risk assessment document. The Guidelines also stated that in criterion development, isomers should be regarded as part of a chemical class rather than as a single compound. A class criterion, therefore, was an estimate of risk/safety which applied to more than one member of a class. It involved the use of available data on one or more chemicals of a class to derive criteria for other compounds of the same class in the event that there were insufficient data available to derive compound-specific criteria. The criterion applied to each member of the class, rather than to the sum of the compounds within the class. The 1980 methodology also acknowledged that, since relatively minor structural changes within the class of compounds can have pronounced effects on their biological activities, reliance on class criteria should be minimized.

The 1980 methodology prescribed the following analysis when developing a class criterion:

- A detailed review of the chemical and physical properties of the chemicals within the group should be made. A close relationship within the class with respect to chemical activity would suggest a similar potential to reach common biological sites within tissues. Likewise, similar lipid solubilities would suggest the possibility of comparable absorption and distribution.
- Qualitative and quantitative data for chemicals within the group are examined. Adequate toxicological data on a number of compounds with a group provides a more reasonable basis for extrapolation to other chemicals of the same class than minimal data on one chemical or a few chemicals within the group.
- Similarities in the nature of the toxicological response to chemicals in the class provides additional support for the prediction that the response to other members of the class may be similar. In contrast, where the biological response has been shown to differ markedly on a qualitative and quantitative basis for chemicals within a class, the extrapolation of a criterion to other members is not appropriate.
- Additional support for the validity of extrapolation of a criterion to other members of a class could be provided by evidence of similar metabolic and pharmacokinetic data for some members of the class.

Today's Notice allows for the development of a criterion for classes of chemicals, as long as the 1980 methodology guidance is followed and a justification is provided through the analysis of mechanistic data, pharmacokinetic data, structure-activity relationship data, and limited acute and chronic toxicity data. When potency differences between members of a class is great (such as in the case of chlorinated dioxins and furans), toxicity equivalency factors (TEFs) may be more appropriately developed than one class criterion. The Agency requests comments on the practice of developing criteria for classes of compounds and whether the guidance provided here is sufficient to ensure that class criteria are derived appropriately.

5. Criteria for Essential Elements

The 1980 AWQC National Guidelines acknowledged that developing criteria for essential elements, particularly metals, must be a balancing act between toxicity and essentiality. The 1980 guidelines state:

> that the criteria must consider essentiality and cannot be established at levels which would result in deficiency of the element in the human population. The difference between the RDA and the daily doses causing a specified risk level for carcinogens or the ADIs (now RfDs) for noncarcinogens defines the spread of daily doses which the criterion may be derived. Because errors are inherent in defining both essential and maximum-tolerable levels, the criterion is derived from the dose levels near the center of such dose ranges.

In today's Notice, EPA endorses the guidance from the 1980 methodology and adds that the process for developing criteria for essential elements should be similar to that used for any other chemical with minor modifications. The RfD represents concern for one end of the exposure spectrum (toxicity), whereas the RDA represents the other end (minimum essentiality). Where the RDA and RfD values might occasionally appear to be similar in magnitude to one another, it does not imply incompatibility of the two methodological approaches, nor does it imply inaccuracy or error in either calculation.

Appendix IV. Summary of Ambient Water Quality Criteria for the Protection of Human Health: Acrylonitrile [16]

This criteria document updates the national criteria for acrylonitrile using new methods and information described in this **Federal Register** document and Technical Support Document (USEPA,

[16] This is a preliminary summary of a criteria document being prepared for the derivation of the Ambient Water Quality Criteria (AWQC) for the protection of human health from exposure to acrylonitrile. The calculated AWQC values presented in this draft are subject to revision pending inclusion of further information concerning exposure as well as possible changes in the toxicological information used to derive the criterion.

1998a) to calculate ambient water quality criteria. These new methods include approaches to determine dose-response relationships for both carcinogenic and non-carcinogenic effects, updated information for determining exposure factors (e.g., values for fish consumption), exposure assumptions, and procedures to determine bioaccumulation factors. For more detailed information please refer to the U.S. EPA Ambient Water Quality Criteria (AWQC) document for Acrylonitrile (USEPA, 1998b).

Background Information

The AWQC is being derived for acrylonitrile (CAS No. 107–13–1). The chemical formula is $C_3H_3N_2$. Acrylonitrile occurrence in environmental media is not well-documented. Several regional and local drinking water surveys were found and one limited study analyzed ambient air samples. Limited information is also available on acrylonitrile migration into foods from packaging materials.

Acrylonitrile is largely used in the manufacture of copolymers for the production of acrylic and modacrylic fibers. Other major uses include the manufacture of acrylonitrile-butadiene-styrene (ABS) and styrene acrylonitrile (SAN) (used in production of plastics), and nitrile elastomers and latexes. It is also used in the synthesis of antioxidants, pharmaceuticals, dyes, and surface-active agents.

According to the U.S. Environmental Protection Agency's (EPA) Toxic Release Inventory, the total release of acrylonitrile into the environment in 1990 by manufacturers, was 8,077,470 pounds. The two largest pathways of release were underground injection, which accounted for 61% (or 4,925,276 pounds) of the total release, and emissions into the air, which accounted for 39% (or 3,148,049 pounds) of the total release. Release of acrylonitrile into water bodies was reported at 3,877 pounds and release onto land was reported at 268 pounds.

A baseline BAF of 1.5 was calculated for acrylonitrile. The baseline BAF was calculated using a value of 0.17 for the log K_{ow} and 1.000 for the food-chain multiplier (FCM) at trophic level 4. A value of 0.17 was selected as a typical value of the log K_{ow} for acrylonitrile (USEPA 1998b). A value of 1.000 was selected as the FCM for trophic level 4, reflective of top predator fish based on a log K_{ow} of 2.0 from USEPA (1998a). Using these data, the baseline BAF was calculated as:

K_{ow} * FCM=($10^{0.17}$)*1.000=1.5 (rounded to two significant digits).

Based upon sufficient evidence from animal studies (multiple tumor types in several strains of rats by several routes) and limited evidence from human studies (lung tumors in workers), positive mutagenicity, acrylonitrile is considered as a likely human carcinogen by any route. A linear approach is used for the low dose extrapolation.

AWQC Calculation

For Ambient Waters Used as Drinking Water Sources

$$AWQC = RSD \times \left(\frac{BW}{DI + \sum_{i=2}^{4} (FI_i \times BAF_i)} \right)$$

The cancer-based AWQC was calculated using the RSD and other input parameters listed below:

Where:

RSD=Risk specific dose (1.6×10^{-6} mg/kg-day at 10^{-6} lifetime risk)

BW=Human body weight assumed to be 70 kg

DI=Drinking water intake assumed to be 2 L/day

FI=Fish intake at trophic level i, i=2,3, and 4; total intake assumed to be 0.01780 kg/day

BAF=Bioaccumulation factor at trophic level i (i=2,3, and 4) equal to 1.03, 1.02, and 1.05 L/kg-tissue for trophic levels 2,3, and 4, respectively.

This yields concentrations of 5.5×10^{-5} mg/L (or 0.05 µg/L), for a 10^{2-6} (one in a million) lifetime cancer risk.

For Ambient Waters Not Used as Drinking Water Sources

When the water body is to be used for recreational purposes and not as a source of drinking water, the drinking water value (DI above) is eliminated from the equation and it is substituted with an incidental ingestion value (II). The incidental intake is assumed to occur from swimming and other activities. The fish intake value is assumed to remain the same. The default value for incidental ingestion is 0.01 L/day. When the above equation is used to calculate the AWQC with the substitution of an incidental ingestion of 0.01 L/day an AWQC of 4.0×10^{-3} mg/L (or 4.0 µg/L) is obtained for a 10^{-6} lifetime cancer risk.

Site-Specific or Regional Adjustments to Criteria

Several parameters in the AWQC equation can be adjusted on a site-specific or regional basis to reflect regional or local conditions and/or specific populations of concern. These include fish consumption, incidental water consumption as related to regional/local recreational activities, BAF (including factors used to derive BAFs, percent lipid of fish consumed by target population, and species representative of given trophic levels), and the relative source contribution. States are encouraged to make adjustments using the information and instructions provided in the Technical Support Document (USEPA, 1998a).

References

USEPA. 1998a. Ambient Water Quality Criteria Derivation Methodology—Human Health. Technical Support Document. Final Draft. EPA 822–B–98–005. Office of Water. Washington, DC. July.

USEPA. 1998b. Ambient Water Quality Criteria for the Protection of Human Health: Acrylonitrile. EPA 822–R–98–006.

Appendix V. Summary of Ambient Water Quality Criteria for the Protection of Human Health: 1,3-Dichloropropene [17]

This criteria document updates the national criteria for 1,3–DCP using new methods and information described in this **Federal Register** document and Technical Support Document (USEPA, 1998a) to calculate ambient water quality criteria. These new methods include approaches to determine dose-response relationships for both carcinogenic and non-carcinogenic effects, updated information for determining exposure factors (e.g., values for fish consumption), exposure assumptions, and procedures to determine bioaccumulation factors. For more detailed information please refer to the U.S. EPA Ambient Water Quality Criteria (AWQC) document for 1,3-Dichloropropene (1,3–DCP) (USEPA, 1998b).

Background Information

The AWQC is being derived for 1,3-Dichloropropene (CAS No. 542–75–6). The chemical formula is $C_3H_4Cl_2$ and molecular weight is 110.98 (pure isomers). At 25°C, the physical state of 1,3–DCP is a pale yellow to yellow liquid. Dichloropropene (DCP) is used as soil fumigant in the United States to control soil nematodes on crops grown in sandy soils. The EPA's National

[17] This is a preliminary summary of a criteria document being prepared for the derivation of the Ambient Water Quality Criteria (AWQC) for the protection of human health from exposure to 1,3-dichloropropene. The calculated AWQC values presented in this draft are subject to revision pending inclusion of further information concerning exposure as well as possible changes in the toxicological information used to derive the criterion.

Toxics Inventory data base reported air emissions of 18,820,000 pounds/year in the U.S. (USEPA, 1996a). Numerous studies have sampled for DCP (and isomers) in drinking water, groundwater and surface waters across the U.S. (Hall et al., 1987; Miller et al., 1990; RIDEM, 1990; Rutledge, 1987; STORET, 1992). All of these studies report concentrations of 1,3–DCP usually at or below the detection limits (USEPA, 1998b).

The AWQC bioaccumulation factor (BAF) is 2.2 L/kg of tissue for 1,3–DCP. This BAF is based on the total concentration of 1,3–DCP in trophic level four biota divided by the total concentration in water, assuming default values for the freely-dissolved fraction and lipid content of consumed aquatic organisms.

The cancer risk evaluation of 1,3–DCP uses the new methods in the proposed cancer guidelines (USEPA, 1996), which are described in this **Federal Register** document and in the Technical Support Document (USEPA, 1998a). Based upon sufficient evidence from animal studies (multiple tumor types in several species by oral, inhalation, and dermal routes), positive mutagenicity, and structural analogues, 1,3–DCP is considered "likely to be carcinogenic to humans by all routes of exposure." Based on the mutagenic mode of action, a linear low dose approach is recommended.

AWQC Calculation

For Ambient Waters Used as Drinking Water Sources

The cancer-based AWQC was calculated using the RSD and other input parameters listed below:

$$AWQC = RSD \times \left(\frac{BW}{DI + \sum_{i=2}^{4} (FI_i \times BAF_i)} \right)$$

Where:

RSD=Risk specific dose 1.0×10^{-5} mg/kg/day (10^{-6} risk)

BW=Human body weight assumed to be 70 kg

DI=Drinking water intake assumed to be 2 L/day

FI=Fish intake at trophic level i, i=2,3, and 4 total intake assumed to be 0.01780 kg/day

BAF=Bioaccumulation factor at trophic level i (i=2,3, and 4), equal to 2.32, 1.86, and 2.78 L/kg-tissue for trophic levels 2,3, and 4, respectively.

This yields a value of 3.4×10^{-4} mg/L, or 0.34 µg/L (rounded from 0.343 µg/L).

For Ambient Waters Not Used as Drinking Water Sources

When the water body is used for recreational purposes and not as a source of drinking water, the drinking water value is eliminated from the equation and it is substituted with an incidental ingestion value. The incidental intake is assumed to occur from swimming and other activities. The fish intake value is assumed to remain the same. The default value for incidental ingestion is 0.01 L/day. When the above equation is used to calculate the AWQC with the substitution of an incidental ingestion of 0.01 L/day an AWQC of $1.4 - 10^{-2}$ mg/L (14 µg/L) is obtained.

Site-Specific or Regional Adjustments to Criteria

Several parameters in the AWQC equation can be adjusted on a site-specific or regional basis to reflect regional or local conditions and/or specific populations of concern. These include fish consumption; incidental water consumption as related to regional/local recreational activities; BAF (including factors used to derive BAFs, percent lipid of fish consumed by the target population, and species representative of given trophic levels); and the relative source contribution. States are encouraged to make adjustments using the information and instructions provided in the Technical Support Document (USEPA, 1998a).

References

USEPA. 1998a. Ambient Water Quality Criteria Derivation Methodology-Human Health. Technical Support Document. Final Draft. EPA 822–B–98–005. Office of Water. Washington, DC. July.

USEPA. 1998b. Ambient Water Quality Criteria for the Protection of Human Health: 1,3- Dichloropropene (1,3–DCP). EPA 822–R–98–005.

Appendix VI. Summary of Ambient Water Quality Criteria for the Protection of Human Health: Hexachlorobutadiene [18]

This criteria document updates the national criteria for HCBD using new methods and information described in this **Federal Register** document and Technical Support Document (USEPA, 1998a) to calculate ambient water quality criteria. These new methods include approaches to determine dose-response relationships for both carcinogenic and non-carcinogenic effects, updated information for determining exposure factors (e.g., values for fish consumption), exposure assumptions, and procedures to determine bioaccumulation factors. For more detailed information please refer to the U.S. EPA Ambient Water Quality Criteria (AWQC) document for hexachlorobutadiene (HCBD)(USEPA, 1998b).

Background Information

The AWQC is being derived for hexachlorobutadiene (CAS No. 87–68–3). The chemical formula is C_4Cl_6 and molecular weight is 260.76. At 25°C, HCBD is a colorless liquid. HCBD is used as a solvent in chlorine gas production, as an intermediate in the manufacture of rubber compounds and lubricants, and as a pesticide. The EPA's National Toxics Release Inventory data base reported total emissions to the environment in 1990 of 5,591 pounds/year in the U.S., of which 4,906 pounds was to air. Numerous studies have sampled for HCBD in drinking water, ground water and surface waters across the U.S. (see USEPA 1998b for a summary). The vast majority of samples are at trace levels or below the detection limits (DL=0.1 mg/L).

The AWQC bioaccumulation factor (BAF) is 620 L/kg of tissue for HCBD. This BAF is based on the total concentration of HCBD in trophic level four biota divided by the total concentration in water, assuming default values for the freely-dissolved fraction and lipid content of consumed aquatic organisms.

The cancer risk evaluation of HCBD uses the new methods described in this **Federal Register** Notice and in the Technical Support Document (USEPA, 1998a). Based on a renal tumor finding in one chronic feeding study at one high dose in one species (both sexes of Sprague-Dawley rats), "via oral route, HCBD is considered as likely to be carcinogenic to humans only at very high exposure conditions, where significant renal toxicity occurs." There is some mutagenic activity in the presence of metabolic activation. Thus, a mutagenic mode of action cannot be ruled out. As a result, both the cancer-based, linear low dose approach and the non-linear margin of exposure approaches are used for deriving the AWQC.

[18] This is a summary of a criteria document being prepared for the derivation of the Ambient Water Quality Criteria (AWQC) for the protection of human health from exposure to HCBD. The calculated AWQC values presented in this draft are subject to revision pending inclusion of further information concerning exposure as well as possible changes in the toxicological information used to derive the criterion.

AWQC Calculation

For Ambient Waters Used as Drinking Water Sources

The cancer-based AWQC was calculated using the RSD and other input parameters listed below:

$$AWQC = RSD \times \left(\frac{BW}{DI + \sum_{i=2}^{4} (FI_i \times BAF_i)} \right)$$

Where:

RSD = Risk specific dose 2.5 x 10^{-5} mg/kg/day (10^{-6} risk)

BW = Human body weight assumed to be 70 kg

DI = Drinking water intake assumed to be 2 L/day

FI = Fish intake at trophic level i, i=2,3, and 4; total intake assumed to be 0.01780 kg/day

BAF = Bioaccumulation factor at trophic level i (i=2,3, and 4) equal to 1,518, 2,389, and 1,294 L/kg-tissue for trophic levels 2,3, and 4, respectively.

This yields a value of 4.6 x 10–$^{-5}$ mg/L, or 0.046 µg/L (rounded from 0.0462 µg/L).

The AWQC using the margin of exposure approach was calculated using the following equation and input parameters listed below.

$$AWQC = \left(\frac{Pdp}{SF} - RSC \right) \times \left(\frac{BW}{DI + \sum_{i=2}^{4} (FI_i \times BAF_i)} \right)$$

where:

Pdp = Point of departure (0.054 mg/kg/day)

SF = Safety factor of 300

RSC = Relative source contribution from air of 1.2 x 10^{-4} mg/kg-day, subtracted in this case

BW = Human body weight assumed to be 70 kg

DI = Drinking water intake assumed to be 2 L/day

FI = Fish intake at trophic level i, i=2,3, and 4; total intake assumed to be 0.01780 kg/day

BAF = Bioaccumulation factor at trophic level i (i=2,3, and 4) equal to 1,518, 2,389, and 1,294 L/kg-tissue for trophic levels 2,3, and 4, respectively.

This yields an AWQC of 1.1 x 10–4 mg/L (0.11 "ug/L).

For Ambient Waters Not Used as Drinking Water Sources

When the waterbody is used for recreational purposes and not as a source of drinking water, the drinking water value is eliminated from the equation and it substituted with an incidental ingestion value. The incidental intake is assumed to occur from swimming and other activities. The fish intake value is assumed to remain the same. The default value for incidental ingestion is 0.01 L/day. When the linear approach is used to calculate the AWQC with the substitution of an incidental ingestion of 0.01 L/day a cancer-based AWQC of 4.9 x 10^{-5} mg/L (or 0.049 µg/L, rounded from 0.0487 µg/L) is obtained. When the non-linear margin of exposure approach is used with the substitution of an incidental ingestion of 0.01 L/day, the AWQC is 1.2 x 10^{-4} mg/L (or 0.12 µg/L, rounded from 0.117 µg/L).

Site-Specific or Regional Adjustments to Criteria

Several parameters in the AWQC equations can be adjusted on a site-specific or regional basis to reflect regional or local conditions and/or specific populations of concern. These include fish consumption; incidental water consumption as related to regional/local recreational activities; BAF (including factors used to derive BAFs, percent lipid of fish consumed by the target population, and species representative of given trophic levels); and the relative source contribution. States are encouraged to make adjustments using the information and instructions provided in the Technical Support Document (USEPA, 1998a).

References

USEPA. 1998a. Ambient Water Quality Criteria Derivation Methodology—Human Health. Technical Support Document. Final Draft. EPA 822–B–98–005. Office of Water. Washington, DC. July.

USEPA. 1998b. Ambient Water Quality Criteria for the Protection of Human Health: Hexachlorobutadiene (HCBD). EPA 822–R–98–004.

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federal register

Friday
August 14, 1998

Part III

Library of Congress

Copyright Office

List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent to Enforce Restored Copyrights Were Filed in the Copyright Office; Notice

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 97–3E]

Copyright Restoration of Works In Accordance With the Uruguay Round Agreements Act; List Identifying Copyrights Restored Under the Uruguay Round Agreements Act for Which Notices of Intent to Enforce Restored Copyrights Were Filed in the Copyright Office

AGENCY: Copyright Office, Library of Congress.

ACTION: Publication of Ninth List of Notices of Intent to Enforce Copyrights Restored Under the Uruguay Round Agreements Act.

SUMMARY: The Copyright Office is publishing its ninth list of restored copyrights for which it has received and processed Notices of Intent to Enforce a copyright restored under the Uruguay Round Agreements Act. Publication of the lists creates a record for the public to identify copyright owners and works whose copyright has been restored for which Notices of Intent to Enforce have been filed with the Copyright Office.

EFFECTIVE DATE: August 14, 1998.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, or Charlotte Douglass, Principal Legal Advisor to the General Counsel, Copyright GC/I&R, Post Office Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

I. Background

The Uruguay Round General Agreement on Tariffs and Trade and the Uruguay Round Agreements Act (URAA) (Public Law 103–465; 108 Stat. 4809 (1994)) provide for the restoration of copyright in certain works that were in the public domain in the United States. Under section 104A of title 17 [1] of the United States Code as provided by the URAA, copyright protection was restored on January 1, 1996, in certain works by foreign nationals or domiciliaries of World Trade Organization (WTO) or Berne countries that were not protected under the copyright law for the reasons listed below in (2). Specifically, for restoration of copyright, a work must be an original work of authorship that on the date of restoration:

(1) was not in the public domain in its source country through expiration of term of protection;

(2) was in the public domain in the United States due to:

(i) noncompliance with formalities imposed at any time by United States copyright law, including failure of renewal, publishing the work without a proper notice, or failure to comply with any manufacturing requirements;

(ii) lack of subject matter protection in the case of sound recordings fixed before February 15, 1972; or

(iii) lack of national eligibility (e.g., the work is from a country with which the United States did not have copyright relations at the time of the work's publication); and

(3) has at least one author (or in the case of sound recordings, rightholder) who was, at the time the work was created, a national or domiciliary of an eligible country. If the work was published, it must have been first published in an eligible country and not published in the United States within 30 days of first publication. See 17 U.S.C. 104A(h)(6).

A work meeting these requirements is protected "for the remainder of the term of copyright that the work would have otherwise been granted in the United States if the work never entered the public domain in the United States." 17 U.S.C. 104A(a)(1)(B).

Under the URAA, copyright in restored works vests automatically on the date of restoration. 17 U.S.C. 104A(a)(1)(A). That date is January 1, 1996, if the particular nation was already a member of the World Trade Organization (WTO) or the Berne Convention. Otherwise, the effective date of restoration is the date of a particular nation's adherence to the WTO or the Berne Convention or the date when the President issues a proclamation extending copyright restoration to that nation.

Although the copyright owner may immediately enforce the restored copyright against individuals who infringe his or her rights on or after the effective date of restoration, the copyright owner's right to enforce the restored copyright is delayed against reliance parties. Typically, a reliance party is one who was already using the work before December 8, 1994, the date the URAA was enacted. See 17 U.S.C. 104A(h)(4). Before a copyright owner can enforce a restored copyright against a reliance party, the copyright owner must file a Notice of Intent (NIE) with the Copyright Office or serve an NIE on such a party.

An NIE may be filed in the Copyright Office within 24 months of the date of restoration of copyright. Alternatively, an owner may serve an NIE on an individual reliance party at any time during the term of copyright; however, such notices are effective only against the party served and those who have actual knowledge of the notice and its contents. NIEs appropriately filed with the Copyright Office and published herein serve as constructive notice to all reliance parties.

II. Administrative Processing

Pursuant to the URAA, the Office is publishing its ninth four-month list identifying restored works for notices of intent to enforce a restored copyright filed with the Office. 17 U.S.C. 104A(e)(1)(B). The earlier lists were published between May 1, 1996, and April 17, 1998. 61 FR 19372 (May 1, 1996), 61 FR 46134 (Aug. 30, 1996), 61 FR 68454 (Dec. 27, 1996), 62 FR 20211 (April 25, 1997), 62 FR 44842 (Aug. 22, 1997), 62 FR 66766 (Dec. 19, 1997), 63 FR 5142 (Jan. 30, 1998), and 63 FR 19287 (April 17, 1998). To allow for processing this NIE information, the Office closed the record for publication three days before forwarding this record for publication. Accordingly, the NIEs listed herein are those entered into the public records of the Office between January 21, 1998 and August 5, 1998. Any NIEs timely received in the Copyright Office but not processed by August 5, 1998, would appear on a new four-month list, and be published on December 11, 1998.

NIEs for works restored to copyright on January 1, 1996, must have been postmarked on or before December 31, 1997, to be accepted in the Copyright Office for publication in the **Federal Register**. See 17 U.S.C. 104A(d)(2). NIEs that were received in the Office too late for **Federal Register** publication (i.e., beyond their source country's 24-month eligibility period) will be returned to the remitter unrecorded, and the fee will be refunded. On the other hand, owners of works that are still within their eligible filing period may continue to file such notices with the Copyright Office, receive constructive notice, and have their titles published by the Office in the **Federal Register**. Because the period for filing NIEs in the Office for most all countries [2] eligible to file has ended, the

[1] The URAA's amendment of 17 U.S.C. 104A replaced section 104A under the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057, 2115 (1993)). The Uruguay Round Trade Agreements, Texts of Agreements, Implementing Bill, Statement of Administrative Action, and Required Supporting Statements, H.R. Doc. No. 316, 103d Cong., 2d Sess. 324 (1994). See 60 FR 50414 (Sept. 29, 1995).

[2] NIEs for works whose source country is Angola may be filed in the Copyright Office no later than November 30, 1998; NIEs for works whose source country is Mongolia may be filed no later than January 28, 1999.

Office will publish a new four month list only in the event that it receives new or Correction NIEs from currently eligible remitters, or from nationals of source countries made newly eligible by reason of adherence to the Berne Convention, the World Trade Organization, or Presidential proclamation.

III. Correction of Previously Filed NIEs

Correction NIEs for major errors (essentially, major errors in title and owner information) on any NIE filed must be submitted within the eligibility period. 37 CFR 201.34 (d)(6)(i). Minor errors may be corrected at any time without regard to eligibility for filing, pursuant to the interim regulation on Correction NIEs, published at 62 FR 55736 (Oct. 28, 1997).

IV. On-line Availability of NIE Lists

Using the information provided herein, one may search the Office's database to obtain additional information about a particular NIE. NIEs are located in what is known as the Copyright Office History Documents (COHD) file, which is available from computer terminals located in the Copyright Office itself or from terminals located in other parts of the Library of Congress through the Library of Congress Information System (LOCIS). Alternative ways to connect through Internet are (i) the World Wide Web (WWW), using the Copyright Office Home Page at: http://www.loc.gov/copyright; or (ii) connect directly to LOCIS through the telnet address at locis.loc.gov. WWW is available 24 hours a day. LOCIS is available 24 hours a day Monday through Friday, U.S. Eastern Time; Saturday, until 5 p.m.; and Sunday after 11 a.m. [3]

Information available online includes: the title or brief description if untitled; an English translation of the title; the alternative titles if any; the name of the copyright owner or owner of one or more exclusive rights, the date of receipt of the NIE in the Copyright Office; the date of publication in the **Federal Register**; and the address, telephone and telefax number of the copyright owner. If given on the NIE, the online information will also include the author, the type of work, and the rights covered by the notice. See 37 CFR 201.33(f). For the purpose of researching the full Office record of NIEs on the Internet, the Office has made online searching instructions accessible through the Copyright Office Home Page. Researchers can access them through the Library of Congress Home Page on the World Wide Web by selecting the copyright link. Select the menu item "Copyright Office Records" and/or "URAA, GATT Amends U.S. law." In addition to online records, images of the complete NIEs as filed are on optical disc and available from the Copyright Office.

V. Alien Properties Custodian Act

The URAA does not restore copyright protection to "[a]ny work in which the copyright was ever owned or administered by the Alien Property Custodian and in which the restored copyright would be owned by a government or instrumentality thereof." 17 U.S.C.104A(a)(1)(B)(2). For those seeking to determine whether or not this exclusion applies to a particular work, the Office published background information at 63 FR 19289 (April 17, 1998).

VI. Scope of NIE Recordation

Under the URAA, the owner of a right in a restored work may file an NIE to notify reliance parties of its intention to enforce its right. The Copyright Office is required by law to publish in the **Federal Register** "lists identifying restored works and the ownership thereof if a notice of intent to enforce a restored copyright has been filed." 17 U.S.C. 104A(e)(1)(B)(I). The Office does not research the facts stated in Notices of Intent to Enforce to determine whether a work is or is not eligible for restoration. Nor does the Office adjudicate between competing parties who have filed NIEs for identical works. (Under section 104A, however, a material false statement knowingly made with respect to any restored copyright identified in an NIE makes void all claims and assertions made with respect to such restored copyright. 17 U.S.C. 104A(e)(3).). Accordingly, the filing of an NIE indicates only that a party claims rights in a restored work, and does not represent a determination by the Copyright Office that this claim is valid. In all cases, the validity of such a claim is governed by the terms of the relevant law, including the URAA, as applied to the relevant facts.

VII. Ninth List of Notices of Intent To Enforce

The following restored works are listed alphabetically by copyright owner; multiple works owned by a particular copyright owner are listed alphabetically by title. Works having more than one copyright proprietor are listed under the first owner and cross-referenced to the succeeding owner(s). A cross-reference to the composite owner (e.g., Title I owned by "A B & C") will state, "SEE A B & C" at the listing for each individual owner (e.g., for Owner A, for Owner B and for Owner C).

Art Theatre Guild of Japan Company, Ltd., Cinemahaute Company, Ltd.

Hipokuratesu-tachi.

Art Theatre Guild of Japan Company, Ltd., Takahashi Productions, Kokusai Hoei Company, Ltd.

Tattoo ari.

Authors Rights Restoration Corporation, Inc.

Aguiluchos Mexicanos.
El agula y el nopas.
Al filo de los machetes.
Amor a la vida.
Amor en la sombra.
Un amor extrano.
El amor tiene cara de mujer.
El angel del silencio.
Los ardores de mi ahijada.
Asesino trasvesti.
Ay que rechulo es puebla.
Bamba.
El bano de Afrodita.
La barca de oro.
Barridos y regados.
Bartolo toca la flauta.
Bel ami.
Blue Demon contra las diabolicas.
Blue Demon contra los cerebros infernales.
Blue Demon el demonio azul.
Blue Demon vs. las Mujeres Arana.
Bodas de oro.
Caballeria del imperio.
Cabarets de frontera.
Cabo de hornos.
Camino de Sacramento.
Cascara contra bikini.
El caso de la mujer asesinadita.
El chicano justiciero.
Conserje en condominio.
Corazon salvaje.
Corazones de Mexico.
Cri cri el grillito cantor.
Cuando acaba la noche.
Curvas peligrosas.
El derecho de nacer.
La Diana cazadora.
Dona diabla.
Donde estas corazon?
Dueno y senora.
La dulce enemiga.
La edad de la inocencia.
El embajador.
Ensename a besar.
La entrega.
Este vampiro es un tiro.
La fierecilla del puerto.
Fugitivo en la noche.
Gente violenta.
La golondrina.

[3] Not all files are available after 9:30 p.m. on weekdays. On Sundays, all files may not be available from 5 p.m.–8 p.m.

Los guaruras.
Hasta que llovio en Sayula.
La hermana blanca.
El hermano Pedro.
La hija de la Camelia.
El hijo de nadie.
Hombre o demonio.
Horizontes de sangre.
Impaciente del corazon.
El indomable solitario.
Isla para dos.
Jesus nuestro senor.
El Jinete justiciero.
Jinete justiciero en retando a la muerte.
Juarez y Maximiliano.
Las limpias.
Mafia de la frontera.
La malaguena.
Mama Dolores.
Maria.
Maria Magdalena.
Mascara contra bikini.
Los matones del norte.
Medianoche.
El ministro y yo.
Mision suicida.
La mujer que no tuvo infancia.
La mujer que quiere a dos.
La mujer que yo ame.
Mujeres sin manana.
Un mulato llamado Martin.
El narco (duelo rojo).
Natacha.
Negro es mi color.
No the enganes corazon.
La noche del pecado.
Nunca es tarde para amar.
Oro maldito.
Oro, sangre y sol.
El Padre Morelos.
La paloma.
Pancho Villa vs. Martin Corono.
Para siempre amor mio.
El patrullero 777.
Pistoleros asesinos.
Pistoleros bajo el sol.
Prisonera del pasado.
Pueblo de odios.
Pueblo en armas.
Que dios me perdone.
Quiero ser artista.
Rancho de mis recuerdos.
Rayando el sol.
El rayo del sur.
La reina de la opereta.
Reina de reinas.
El reina del sur.
Revolucion (la sombra del panico).
El rey de Mexico.
Sabras que te quiero.
San Juan de Dios es jalisco.
Sangre en el ruedo.
Santo contra cerebro del mal.
Santo contra el cerebro diabolico.
Santo contra el conde dracula.
Santo contra hombres infernales.
Santo contra la magia negra.
Santo contra los zombies.
Santo en el museo de cera.
Santo en la venganza de las mujeres vampiro.
Santo frente a la muerte.
Santo vs. la hija de Frankestein.
Santo vs. la mafia del vicio.
Santo y Blue Demon vs. las bestias del terror.
Simon Bolivar.
El socio.
Sonadores de la goria.
Soy charro de Rancho Grande.
Soy Mexicano de aca de este lado.
Te sigo esperando.
Tehuantepc.
Tengo que matarlos.
Terror en los barrios.
Tierra sangrienta.
Tonta tonta pero no tanto.
Las tres alegres comadres.
Tribu.
Los triunfadores.
El ultimo rebelde.
El valor de vivir.
Venganza apache.
Vida inutil de Pito Perez.
Viva la soldadera.
Viva Mexico.
Vuelve Pancho Villa.
Ziari.

Casa Musicale Sonzogno

Lancillotto del lago.
Sandha.
La sulamita.

Cinemahaute Company, Ltd. SEE Art Theatre Guild of Japan Company, Ltd., Cinemahaute Company, Ltd.

Films de la Pleiade

D'homme a hommes.
Lumiere.

Polski Wydawnictwo Muzyczne

Ballades, 1949.
Chamber music, 1964.
Concertos, 1964.
Impromptus, 1964.
Minor works, 1964.
Nocturnes, 1964.
Polonaises, 1964.
Preludes—CW, 1949.
Preludes—DW, 1949.
Scherzos, 1964.
Sonatas, 1964.
Songs, 1964.
Studies (etudes)—1949.
Waltzes, 1951.

Rahter (D.) Verlag

Rossiniana suite.

Takahashi Productions. SEE Art Theatre Guild of Japan Company, Ltd., Takahashi Productions, Kokusai

Toho Company, Ltd., Mifune Productions

Machibuse.
Shinsengumi.

Transit Film, GmbH for Federal Republic of Germany

Echo der Heimat, Folge 3.

Uitgeverij Jorrit, BV.

The artist.
The candy store.
The carol singers.
The dinner party.
The flower stall.
Front door greeting.
The goodbye.
The greengrocers' stall.
The map reader.
The photographer.
Piano player.
Puppet show.
The snowman.
The toy shop.
The watchmakers' shop.
Window shopping.

Dated: August 10, 1998.

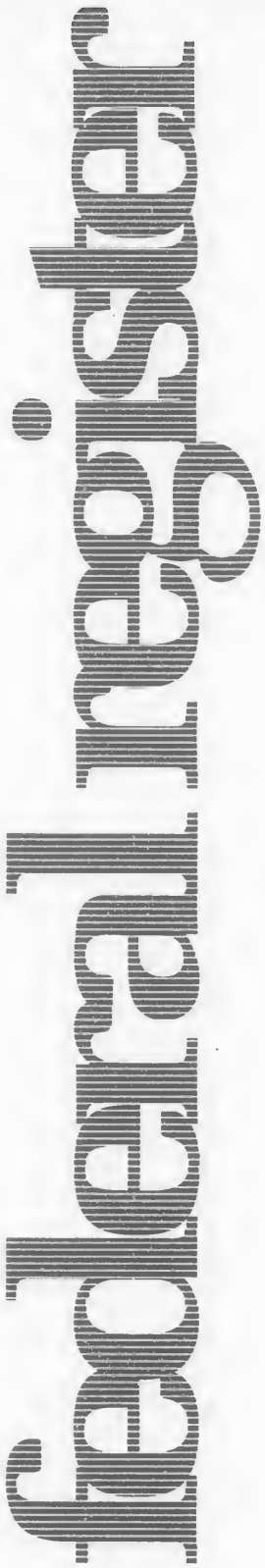
Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 98–21745 Filed 8–13–98; 8:45 am]

BILLING CODE 1410–30–P

Friday
August 14, 1998



Part IV

Environmental Protection Agency

40 CFR Parts 141 and 142
Revision of Existing Variance and Exemption Regulations To Comply With Requirements of the Safe Drinking Water Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6144–2]

RIN 2020–AA37

Revision of Existing Variance and Exemption Regulations To Comply With Requirements of the Safe Drinking Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Agency is promulgating regulations to revise the existing regulations regarding Safe Drinking Water Act variances and exemptions. These revisions are based on the 1996 Safe Drinking Water Act Amendments. In addition to revising the existing language regarding variances and exemptions, the rule includes procedures and conditions under which a primacy State/Tribe or the EPA Administrator may issue small system variances to public water systems serving less than 10,000 persons. This rule-making is intended to provide regulatory relief to all public water systems, particularly small systems.

DATES: This rule is effective September 14, 1998. Solely for judicial review purposes, this final rule is promulgated as of 1 p.m. eastern time on August 28, 1998 as provided in 40 CFR 23.7.

ADDRESSES: The rule-making record is available for inspection at the Water Docket, mailcode MC4101, Room EB57, Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460, from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Andrew J. Hudock, Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Water Enforcement Division (Mailcode: 2243–A), Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Phone: (202) 564–6032.

SUPPLEMENTARY INFORMATION:

Table of Contents

Regulated Entities

Potentially regulated entities are public water systems (PWSs).

Category	Example of regulated entities
Industry	Privately-owned utilities, ancillary water systems, homeowner's associations, mobile home parks, municipalities; county governments; water districts; water and sewer authorities.
State/Local/Tribal governments	Publicly-owned PWSs, municipalities, county governments, water districts, State governments.
Federal government	Federally-owned PWSs.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the Agency is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section, **FOR FURTHER INFORMATION CONTACT.** Please note that elsewhere throughout this preamble and rule, the term "State" has the same definition as currently exists in 40 CFR 141.2, i.e., "State means the agency of the State or Tribal government which has jurisdiction over public water systems* * *."

I. Statutory Authority

Sections 115–117 of the Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104–182), enacted August 6, 1996, amended sections 1415 and 1416 of the Act (42 U.S.C. 300g–4, 300g–5) concerning variances and exemptions. This rulemaking codifies, interprets, and implements these new provisions.

A. Overview

As provided under the Act, under certain conditions, variances are available to public water systems that cannot (due to source water quality, or, in the case of small systems, affordability) comply with the national primary drinking water standards. Variances generally allow a system to provide drinking water that may be above the maximum contaminant level on the condition that the quality of the drinking water is still protective of public health. In the case of small system variances, the duration of the variance generally coincides with the life of the technology. An exemption, on the other hand, is intended to allow a system with compelling circumstances an extension of time before the system must comply with applicable Safe Drinking Water Act requirements. An exemption is limited to three years after the otherwise applicable compliance date, although extensions up to a total

of six additional years may be available to small systems under certain conditions.

B. New Small System Variances

Section 1415(e) establishes new provisions by which a small public water system may obtain a variance from complying with National Primary Drinking Water Regulations (NPDWR) under certain specified conditions. These provisions were discussed in detail in the proposal (63 FR 19439–40).

C. General Variances and Exemptions

As discussed in the preamble to the proposed rule, Congress modified the language governing general variances (i.e., those variances available to systems of any size). First, a variance may now be granted on the condition that the system install the best technology, treatment technique, or other means, which the Administrator finds are available. This new modification changes the previous requirement that mandated that the system install variance technologies before a variance could be issued. Second, before a variance can be issued, Congress also requires primacy States/Tribes to conduct an evaluation that satisfies the State/Tribe that alternative sources of water are not reasonably available to a system. Today's rule codifies these changes.

Congress made several changes to the exemption provisions as well. First, the new provisions require the schedule for an exemption to require compliance with each contaminant level and treatment technique for which the exemption was granted as soon as practicable, but not later than three years after the otherwise applicable compliance date established in section 1412(b)(10) of the Act.

The only exception to this exemption time period is in section 1416(b)(2)(C) of the Act, for small systems serving less than 3,300 persons, under certain specified conditions, for which extensions may be renewed for one or more additional two-year periods, but not to exceed a total of six years of extensions, in addition to the three-year original exemption.

Second, the Amendments also modified section 1416 of the Act to specify a wider set of factors that need to be considered before an exemption is granted from the requirements of the NPDWR. Section 1416(a) of the Act now requires the State/Tribe, in determining whether an exemption may be granted, to consider whether the public water system is a "disadvantaged community" and whether management or restructuring changes can be made that will result in compliance or, if compliance cannot be achieved, would improve the quality of the drinking water. Section 1416(a)(4) also requires a State/Tribe to consider measures to develop an alternative source of water supply. Finally, section 1416(b)(2)(D) of the Act states that a small system that has received a variance under section 1415(e) cannot receive an exemption under section 1416.

II. Consultation With Public Water Systems, State, Tribal and Local Governments, Environmental Groups, and Public Interest Groups

As required under section 1415 of the SDWA, as amended, the Agency has consulted with State representatives, as well as a broad range of other interested parties, in the development of this rule. These consultations are described in the preamble to the proposed rule (63 FR 19440–41). The rule being promulgated today has been developed in consultation with, and takes into consideration suggestions from, public water systems, environmental groups, public interest groups, the States, Tribes, and other interested parties.

III. Discussion of Final Rule

A. Purpose and Applicability

Through this regulation, the Agency seeks to codify the 1996 SDWA amendments addressing general variances and exemptions provisions, as well as providing a new subpart which addresses the procedures for issuance of small system variances. This rule will be applicable to all eligible public water systems and primacy agencies (States, Tribes, and the Agency).

B. Effective Date

The effective date of this rule will be September 14, 1998. The 30-day effective date in the final regulations allows for a State to issue variances and exemptions as soon as the State adopts regulations no less stringent than today's regulations and submits any revisions to the State's rules to EPA for approval under 40 CFR 142.12(a)(1). A State may adopt these regulations at any time before or after the 30-day effective date.

Upon the effective date, the issuance of all variances and exemptions must meet requirements which are no less stringent than today's rule. If a State has existing regulations which are less stringent than today's rule and the State wishes to issue variances or exemptions, the State must adopt regulations which are no less stringent than today's rule.

In response to commenters who were concerned that the 30-day time period is too short for implementation by the State, EPA wishes to clarify that the effective date in the regulation does *not* require that a State adopt the regulation and modify its program within 30 days of promulgation. A State may choose not to issue variances or exemptions or may choose to delay implementation until new applicable drinking water regulations are promulgated. The effective date provision in the regulation does not limit the State in its decision whether to implement these regulations.

C. Primacy Requirements

Primacy States/Tribes, if they choose to issue variances and exemptions, are required under section 1413(a)(4) of the Safe Drinking Water Act to issue such variances and exemptions under conditions and in a manner which is not less stringent than the variance and exemption provisions of the Act. In addition, section 1415(e)(7)(A) of the Safe Drinking Water Act requires the Administrator to promulgate regulations that specify procedures to be used by the Administrator or the State to grant or deny variances. In reading these two provisions together, EPA believes that Congress intended that States adopt procedures no less stringent than those identified in this rule for issuance of small system variances. Therefore, the Agency has amended § 142.10(d) of the regulations accordingly. Thus, if a primacy State wishes to issue small system variances, it must first enact State regulations which are no less stringent than the requirements in section 1415(e) of the Act and as embodied in this rule, and seek EPA approval of such regulations by submitting a program revision package.

D. "Plain English" Format of New Subpart

As discussed in the preamble to the proposed rule, the Agency has drafted Subpart K of these regulations in a question-and-answer format in "plain English", in accordance with current Agency policy for regulation development. The intent of "plain English" is to produce rules which are clear, concise, straight-forward, understandable, and enforceable, without extensive "legalese". Public comments supported this approach.

On June 1, 1998, President Clinton issued a memorandum directing that federal government documents generally be drafted in "plain language". Although the Presidential Memorandum does not apply to rules, such as this one, which are proposed before 1999, EPA believes that this rule incorporates and is fully consistent with

the plain language concepts outlined in the Memorandum.

E. General Provisions in Subpart K

Sections 142.301–142.305 of the small system variance regulations essentially codify the statutory provisions governing who can apply for, and who can grant, these variances. EPA has promulgated these provisions as proposed, with slight modifications to address public comments.

For small system variances, section 1415(e)(6) of the Safe Drinking Water Act states that such variances are not available for (1) any maximum contaminant level (MCL) or treatment technique for a contaminant for which a NPDWR was promulgated prior to January 1, 1986, or (2) a NPDWR for a microbial contaminant or an indicator or treatment technique for microbial contaminant. As discussed in the preamble to the proposed rule, the Agency will not be listing small system variance technologies for microbial contaminants. In addition, the Agency will not be listing any variance technology for an MCL or treatment technique for a contaminant for which a NPDWR was promulgated prior to January 1, 1986 and not subsequently revised or allowing any variances for such contaminants (see § 142.304). With respect to this latter category, the Agency interprets the section 1415(e)(6)(A) prohibition in the Act to apply to the level at which any contaminant was regulated before 1986; therefore, variances are not available to systems above the pre-1986 level even if that level was subsequently revised. However, if the Agency revises a pre-1986 level and makes it more stringent (i.e., makes the MCL lower), then a variance would be available for that contaminant, but only up to the pre-1986 MCL.

Generally, public comments were supportive of this interpretation. One public commenter suggested that the Agency allow small system variances above the pre-1986 MCL. As noted in the preamble to the proposed rule (63 FR 19442), EPA believes that the scope of the prohibition on issuing a variance for an MCL or treatment technique for a contaminant with respect to which an NPDWR was promulgated prior to 1986 is somewhat ambiguous. However, EPA believes that the best interpretation of this provision is that the prohibition attaches to the pre-1986 level for the contaminant and that no variances are allowable for revisions to these levels that are less stringent. The interpretation suggested by the commenter would allow variances for revised, less stringent MCLs even where compliance with an earlier, more stringent MCL was required years ago. This interpretation is inconsistent with what EPA surmises as the intent behind this provision, i.e., to disallow variances for contaminants where compliance should have been achieved long ago. Therefore, EPA is finalizing the regulation as proposed, but with a note stating EPA's interpretation of this provision.

The Agency also received a comment suggesting that the Agency prohibit issuance of the small system variance for acute contaminants. EPA believes that such a prohibition is unnecessary. Congress has already prohibited the issuance of small system variances for microbial contaminants, including many of the acute contaminants. For any other contaminants, EPA may not list a variance technology unless the Agency makes a finding that the use of that technology for that contaminant is protective of public health. In addition, prior to issuance of any small system variance, the primacy agency must also make a finding that the specific terms and conditions of the variance will ensure adequate protection of human health. EPA believes that these determinations will appropriately limit variances for acute contaminants.

F. Small System Variance Requirements

Sections 142.306–142.310 of the rule establish the conditions under which the primacy agency can grant small system variances. The Agency attempted in the proposed rule to provide flexibility in the process of applying and reviewing requests for small system variances. For example, the Agency did not specify any particular form of a variance application or who (the system or the State) needs to provide the relevant information; rather, the Agency only specified that the information must be sufficient for the primacy agency to make certain findings and that those findings must be documented in writing.

Some commenters requested that the Agency clarify who has the burden of ensuring that the information necessary to issue a small system variance is available. The Agency recognizes that States may have helpful technical information that may not be readily available to a small system, such as sanitary surveys. States are encouraged to work with the small systems to determine compliance options and to develop information which may improve the quality of the water served by the system. States may provide valuable assistance to small systems that do not have the capacity to obtain necessary information on their own. States may use elements in their Capacity Development Strategies to assist public water systems in gathering all necessary information for the variance to be issued. However, the ultimate responsibility for providing the information necessary to support a variance rests with the public water system requesting a small system variance as prescribed in section 142.306(a) of the regulation. EPA has modified the regulations to clarify this.

1. Section 142.306. Compliance Options Analysis

Sections 1415(e)(1)–(3) of the Act identify the conditions under which small systems may receive a small system variance. In the rule, § 142.306(b) codifies these conditions and includes concepts related to the State Capacity Development Strategy. The compliance options analysis is an integral element of sections 1415 and 1416 of the Act, as well as under the rule at § 142.306(b). Similar in concept to capacity development, a compliance options analysis can allow the State to consider the underlying reasons for noncompliance, and what options are available to the system to return to compliance for the long term. This portion of the regulations is final as proposed.

2. Section 142.306(b). Documentation of State Considerations in Reviewing Small System Variances

The regulations require that States document their findings regarding a small system's eligibility for a small system variance. Where the State does not have primary enforcement responsibility under section 1413 of the Safe Drinking Water Act, the Agency will document its findings for the record, if it grants a small system variance.

Some public comments on the proposed regulations indicated that documentation of State findings and subsequent submittal to the Administrator (as required under § 142.311) imposed an unnecessary and unreasonable burden on the regulatory agency, and stated that this burden should lie more heavily on the public water system. EPA believes that it is imperative for the regulatory agency to clearly specify and document any information used in determining whether to grant a small system variance. A thorough record must be available for interested members of the public to understand, comment on, or possibly object to a proposed variance or otherwise make informed decisions relating to the public water system. In addition, this information is necessary

for EPA to adequately review proposed small system variances issued as well as for the EPA periodic review of the State variance program as required by the Act. Because the State or the Administrator would be the actual decision makers, they are in a better position than the public water system to document and maintain their findings.

Documentation required in the rule must indicate not only that a certain factor listed in § 142.306 of the regulations was considered, but must also include the rationale for decisions by the State or EPA regarding each of the required findings, as well as the underlying facts supporting that decision. Note, however, that EPA does not believe that this documentation necessarily needs to be extensive. Rather, the documentation needs to be sufficient to explain how the variance will meet the statutory and regulatory requirements in enough detail that interested members of the public and EPA can understand the basis for the decision and determine whether to object to the variance.

3. Section 142.306(b)(2). Affordability Criteria

Section 142.306(b)(2) of the rule codifies the statutory requirement that States undertake a compliance options analysis in accordance with the State's own affordability criteria (including noncommunity systems). One commenter expressed concern that, depending on the level of detail required, the cost of undertaking and documenting such an analysis could be excessive relative to the cost of installing an appropriate variance technology. As an example, the commenter indicated that in their experience, the cost of evaluating restructuring and consolidation options for a given project area ranged from $50,000 to $100,000. EPA understands that a rigorous compliance options analysis may be resource-intensive and expects that States and public water systems will tailor the level of analysis to the needs and resource constraints of the specific situation. EPA received no other comments on this section and is promulgating the rule as proposed.

4. Section 142.306(b)(3). Availability of Approved Variance Technologies

Section 1412(b)(15)(D) of the Act requires that, not later than August 6, 1998, the Agency issue guidance or regulations regarding the available variance technologies for each national primary drinking water regulation for which a variance may be granted. The variance regulations include, in various sections (including § 142.306), the requirement that, during review of an application for a small system variance, a primacy State or the Administrator make a finding whether, among other things, the Administrator has published a variance technology in accordance with section 1412(b)(15) for the applicable maximum contaminant level or treatment technique for which that variance is sought.

Pursuant to section 1412(b)(15)(A) of the Act, variance technologies may not suffice to achieve compliance with the relevant maximum contaminant level or treatment technique, but the variance technologies must achieve the maximum reduction or inactivation efficiency that is affordable considering the size of the system and the quality of the source water. In addition, section 1412(b)(15)(B) requires that any identified variance technology be determined by the Administrator to be protective of public health.

Some public comments requested clarification of whether an alternative technology, not listed by the Administrator pursuant to section 1412(b)(15) of the Act, may be installed through a small system variance. Section 142.307(b)(1) of the regulation requires that the terms and conditions of the small system variance include installation of the technology specified under section 1412(b)(15)(D) of the Act. The Agency recognizes the importance and beneficial value of new alternative technologies. However, Congress specifically mandated that the Administrator publish a list of technologies for small systems and that only the listed technologies may be installed through issuance of a small system variance technology. A State or any other party may petition the Administrator to consider the listing of any new alternative technology. However, section 1415(e)(2) of the Act makes clear that the Agency must specifically list a small system technology before a State may allow a system to install such technology through a small system variance.

5. Section 142.306(b)(5). Adequate Protection of Public Health

Section 142.306(b)(5) of the rule codifies the statutory requirement that the primacy agency grant a small system variance only where the terms ensure adequate protection of public health, considering the source water quality and removal efficiencies and expected useful life of the small systems variance technology. Under section 1412(b)(15)(B) of the Act, the Administrator, in identifying variance technologies for small systems, must determine that the technology is protective of public health considering the quality of the source water to be treated and the expected useful life of the technology. As explained in the preamble to the proposed rule, the Agency believes that Congress intended the Administrator to make a determination that, on a national level, any variance technology identified is generally protective of public health when applied within general source water conditions and operating and maintenance procedures. However, recognizing that the level of public health protection afforded by a specific technology could be dependent on site-specific factors that may vary system by system, Congress provided for a corresponding requirement that the State also make a determination that the terms of the variance as applied to a particular system adequately protect public health.

As required under section 1412(b)(15)(C) of the Act, the variance technology guidance under section 1412(b)(15)(D) will identify assumptions used by the Administrator in determining that each technology is protective of public health. In doing so, the guidance will identify the typical removal efficiency achieved by each variance technology listed by the Administrator, considering the overall capabilities of the treatment process and the source waters on which the technology would typically be applied. The guidance will also discuss source water characteristics that can adversely affect the removal of the contaminant by the process. The State may use this information in the guidance to set specific terms and conditions on the operation of the technology that will ensure adequate protection of public health.

In the proposed rule, EPA solicited comment on whether it would be useful and appropriate to provide additional technology-specific guidance on site-specific factors that should be considered and appropriate terms and conditions that may be needed to ensure adequate protection of public health. In general, commenters were strongly supportive of this idea. Therefore, EPA plans to develop such guidance and make it available as expeditiously as possible after promulgation of this rule. This guidance will cover those contaminants, if any, and available small system variance technologies which are identified in the initial listing prepared under section 1412(b)(15)(C). As additional contaminants and small system variance technologies are identified in the future, the new guidance listing these technologies will include information on consideration of

site-specific factors and appropriate terms and conditions that may be needed to ensure adequate protection of public health.

Several commenters, while endorsing the need for such guidance, also indicated that it should be informational in nature, and not undermine the statutory authority of primacy States to determine that the terms of the variance ensure adequate protection of public health. As stated in the preamble to the proposed rule, EPA understands that Congress clearly left the responsibility to consider site-specific factors and define appropriate terms and conditions to ensure adequate protection of public health to the primacy agencies, and EPA does not wish to diminish that responsibility. At the same time, the Agency believes (and commenters seem to agree) that it may be efficient for EPA to identify, in the context of its determination that a technology is protective, those factors of which the Agency is aware that may be appropriate for the State to consider on a site-specific basis and to suggest appropriate responses to situations which pose additional risks. It is in this spirit that EPA has decided to develop the guidance discussed in this section.

EPA also requested comment in the proposed rule regarding the appropriateness of including, in the final rule, a requirement that States specifically consider impacts on sensitive subpopulations in their determination of adequate public health protection. Commenters were not supportive of such a requirement and EPA has decided not to include it in the final rule. As an alternative, EPA indicated that it may include, in the guidance discussed above, information on specific factors that may result in special risks to sensitive subpopulations and suggestions on how to address such risks. States could then use this information as appropriate to support their determination of adequate protection of public health. Commenters were supportive of this alternative approach. Consequently, EPA will include, in the guidance on site-specific factors and appropriate terms and conditions, information on special risks to sensitive subpopulations, where such risks have been identified, and suggestions on how to address them.

6. Section 142.307. Terms and Conditions of Small System Variances

Section 142.307 outlines what terms and conditions must be included in a small system variance. The Agency received no comments on this section and is thus promulgating it as proposed.

7. Section 142.307(c)(4). Compliance Period for Small System Variances

Section 142.307(c)(4) of the rule codifies the statutory language regarding the duration of variances. The Agency is promulgating this section as proposed.

As discussed in the preamble to the proposed rule, the Agency interprets section 1415(e)(4) to allow the primacy agency to grant the two-year extension to the compliance period at the time of issuance of the variance, upon a determination by the primacy State or the Administrator that those two additional years are necessary to ensure compliance. Such a determination should be supported with sufficient documentation. Therefore, it is possible, under certain conditions, that small systems may receive a five-year compliance schedule to achieve compliance with the terms and conditions of the small system variance.

8. Sections 142.308–142.310. Public Participation Requirements for Issuance of a Small System Variance

a. Overview

The Agency is required under section 1415(e)(7)(A)(i) of the Act to promulgate regulations specifying requirements for notifying the consumers of the public water system that a small system variance is proposed to be granted (including information regarding the contaminant and variance) and requirements for a public hearing on the small system variance before the variance is granted. Today's rule addresses this statutory mandate through §§ 142.308–142.310 of the regulations. These requirements are also intended to ensure that persons served by the system who may wish to file a petition with the Administrator to object to the variance, as provided for in section 1415(e)(10)(B) of the Act, have adequate information and time to do so.

The overall structure of the process intended by today's regulations for granting a small system variance has been modified in response to public comment. This process, as modified, is outlined below, with changes to the process discussed in further detail in the paragraphs which follow the outline:

(1) A small public water system submits an application to the primacy agency for a small system variance;

(2) The primacy agency reviews the small system's application and performs a compliance options analysis to determine if a small system variance should be issued to the public water system.

(3) If a small system variance can be issued in accordance with the Act and the regulations, and upon finding and documenting the required information under Section 142.307 of the rule, the primacy agency establishes the terms and conditions of the proposed small system variance;

(4) The primacy agency or public water system provides notice to persons served by the system of the primacy agency's intent to propose the small system variance and of a public hearing on the proposed variance, including information on the contaminant and its potential health effects, the compliance options considered, and the terms and conditions of the proposed variance; this information must be provided at least 30 days prior to the date of the public meeting;

(5) The primacy agency prepares a draft of the small system variance, including terms and conditions, and, if the public meeting occurs prior to proposal of the small system variance, makes the draft variance available to the public no later than the public meeting;

(6) The primacy agency proposes the variance by publishing a notice in the State equivalent of the **Federal Register**, or in a newspaper widely distributed through the State, or, in the case of the Administrator, in the **Federal Register**;

(7) Either before, or within 15 days after publication of this notice that the variance has been proposed, the primacy agency conducts a public hearing on the draft proposed small system variance;

(8) If a State proposes to issue a small system variance to a public water system serving 3,300 or fewer persons, the State must submit the proposed small system variance and all supporting documentation to EPA for review; if a State proposes to issue a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons, the State must submit the proposed small system variance and all supporting documentation, including any public comments received prior to this submission, to EPA for review and approval of the proposed variance;

(9) Within thirty days of the proposal date (the date on which the primacy agency publishes the notice of the proposed variance) of any small system variance, persons served by the system may petition the Administrator to object to the proposed small system variance; and

(10) The Administrator must respond to all such petitions within 60 days of receiving them and may object to a proposed small system variance within 90 days of the proposal date.

After reviewing public comments on the proposed regulations, EPA has

modified these regulations to provide that either the State or public water system must provide the notice for a public meeting on the small system variance at the same time that the State notifies the public that it intends to propose the small system variance. EPA received many public comments indicating that, in many circumstances, the public water system would be in a better position than the State to identify the persons served by the system and the public water system should have the burden of providing public notice. The revised regulation allows the State to direct the public water system to conduct the public notification requirements in the regulation.

In addition, the Agency received comments that not all States may be able to publish such public notice in a State equivalent to the **Federal Register**. In response, the regulations now provide that the State may publish the notice of the proposed variance in a newspaper with wide circulation in the State.

In summary, the regulation requires that at least one public notice must be provided to the system's consumers (as defined in section III.F.8.d. of the preamble) (in addition to publishing notice of the proposed variance in the State Register or **Federal Register** or in a newspaper widely distributed in the State) to fulfill the requirement of notifying the public of the public hearing and proposal of the small system variance. In any case, the Administrator encourages States and small systems to engage the public in the development and issuance of the small system variance early in the process.

b. Notice by Public Water Systems at the Time that a Small System Variance Application Is Submitted

Based on public comments on the proposed regulations, the Agency is not mandating that the public water system provide notice to the persons served by the system that the system is applying for a small system variance. (Such additional requirements may be imposed through State regulations.) Other regulations, such as the public notification rule and the consumer confidence rule, will ensure that the persons served by the system are aware that the system is operating in violation of the applicable drinking water regulation. Therefore, requiring this initial notice may be redundant in nature and may not be an efficient manner of notifying the public of the condition of the drinking water being supplied by the public water system. Even though this regulation does not require the proposed early notice, the Agency encourages early involvement of the public in the small system variance process.

c. Public Meeting Requirement

Section 142.309 of the regulations addresses the requirements for a public meeting on a draft proposed small system variance and notice of the public meeting. Consistent with section 1415(e)(7)(A)(i) of the Act, a State or the Administrator is required to provide for at least one (1) public meeting on the small system variance before it is granted. However, before holding a public meeting, the State or the Administrator must make public a draft of the proposed small system variance along with various supporting information as specified in § 142.308(c) of the regulations, to ensure that the public is adequately informed of the terms and conditions likely to be in the proposed small system variance. The State or the Administrator must notify the public of the public meeting (and provide the required supporting information) at least 30 days before the date of the meeting. EPA is promulgating this section as proposed.

d. Manner of Public Notification

Section 142.308 of the proposed regulations codifies the Safe Drinking Water Act provision that any person served by the system may petition the Administrator to object to the granting of a variance.

Public comments requested that the Agency clarify the terms "customers", "consumers", and "persons served" as it is used in this regulation. EPA interprets "customers" to mean billing units or other service connections to which water is delivered by the public water system. (Other service connections could include, for example, municipal facilities which receive service but which might not be billed.) On the other hand, EPA interprets "consumers" and "persons served" more broadly to mean persons who receive drinking water from the public water system on a regular basis. The term "person served" or "consumer" includes customers, as defined above, and other persons who are served by the public water system on a regular basis, such as factory workers and tenants of apartment houses and condominiums, who may not receive water bills. The notice requirements in these regulations are intended to provide adequate notice for persons who may wish to participate in the variance process or petition the Administrator to object to the variance. The Agency sought to ensure that these definitions are consistent with other supporting regulations currently in development, including the Consumer Confidence Report regulations.

Based on public comments, the Agency is clarifying whether the primacy agency or the public water system has the burden for the public notice. The Agency recognizes that there may be certain small systems that would require assistance from the primacy agency to satisfy the public notification requirements within the small system variance process. The Agency encourages the primacy agency to work with such systems to ensure that the public is involved in the variance process. However, the Agency does not intend to place the actual burden of the public notice on the primacy agency in these regulations. In order to clarify the Agency's intention, the final regulations make clear that either the primacy agency or the public water system must provide the public notice. The primacy agency maintains flexibility to direct the public water system to provide such notice. For purposes of Agency review and/or approval of a small system variance, the Agency is concerned that the public notification requirements within the regulations are satisfied, not with which entity actually conducts the notice.

Operators of small systems requested that the Agency address the issue of whether persons who are not billing customers of the system must be provided a notice by direct mail considering the burden associated with identifying and obtaining mailing addresses for non-billed consumers of a system's water. In light of all comments, the Agency is retaining the requirement that individual notice only need be provided to billed customers of the system. In addition, notice must be provided in a brief and concise manner to regular consumers who are not billing customers, by some other reasonable method, such as publication in a local newspaper, posting in public places, or delivery to community organizations. Although this might not reach persons outside the service area, it would reach factory workers and tenants of apartment houses and condominiums, even if those persons do not receive water bills. At the time of variance proposal, however, the State must publish a notice in a State-wide publication, thereby reaching interested persons who might not receive water bills or live in the service area. Today's rule would therefore require a State or public water system to provide some form of notice to all persons served by the system on a regular basis.

e. Content of Notices

Section 1415(e)(7)(A)(i) of the Safe Drinking Water Act requires that public notification include information regarding the contaminant and variance. Section 142.308(c) of the regulations implements this statutory requirement. In this provision, the Agency is requiring, along with other information, specific health effects language to be used in the notices. The Agency is requiring use of the health effects language developed for the Consumer Confidence Report Rule. The Agency believes that there are many benefits to the use of standard health effects language in the various public notice provisions of the amended Safe Drinking Water Act, particularly in reducing confusion for the systems and the public.

In addition, in response to comments, EPA has revised the multilingual notification requirement in § 142.308(c)(7) of the proposed regulations. With this revision, the primacy agency will determine what constitutes a large proportion of non-English-speaking residents, and thus when the multilingual notification requirements are applicable. The multilingual notification requirement is consistent with the Agency's Consumer Confidence Report Rule.

The Agency received several comments expressing concern that small public water systems lack the resources to provide public notification materials in foreign languages, and suggesting that EPA either eliminate this requirement or develop such materials in the ten most frequently used languages. In response, the Agency notes that systems are not required to provide a translation of the materials listed in section 142.308(c), but only "information in the appropriate language regarding the content and importance of the notice." (Section 142.308(c)(7)) EPA envisions that in many cases this would entail a relatively short statement indicating that the enclosed materials contain information on a proposed variance from national drinking water regulations which could affect the level of public health protection afforded to consumers of the system's water. Of course, EPA would encourage systems that do have the resources to provide more complete translations of the public notification materials in cases where a significant non-English-speaking population is present.

f. Consumer Petition Process

Section 1415(e)(10)(B) of the Safe Drinking Water Act allows for persons served by the system to petition the Administrator to object to the granting of a small system variance; such petitions must be submitted not later than thirty days after a State proposes to issue a small system variance. This statutory provision is implemented in section 142.310 of today's rule. EPA has clarified the regulation to specify that the date of "proposal" is the date upon which the State publishes its notice of proposal in a State-wide publication. Consumer petitions should be mailed to the EPA Regional Administrator.

G. Sections 142.311 and 142.312. Bases for Administrator's Objections to State-Proposed Small System Variances

Pursuant to section 1415(e)(9) of the Act, § 142.312(a) of the rule requires a primacy State, which is proposing to grant a small system variance to a public water system serving more than 3,300 and fewer than 10,000 persons, to submit that variance to the Administrator for review and approval prior to issuance. Section 142.312(c) requires that, if the Administrator disapproves the variance, the Administrator notify the State in writing of the reasons for such disapproval. Such disapproval must be based upon a determination that the small system did not meet the requirements for a variance under the Act and regulations, including the requirement that the system cannot afford to comply with the maximum contaminant level (MCL) or treatment technique for which the variance is being sought, in accordance with the State affordability criteria.

In addition, § 142.311(a) of the rule requires a primacy State, which is proposing to grant a small system variance to a public water system serving 3,300 or fewer persons, to submit that variance to the Administrator for review prior to issuance. Some public comments to the proposed regulations suggested that the Administrator does not have the statutory authority to review proposed small system variances for systems serving fewer than 3,300 persons and that the proposed regulations are therefore in conflict with section 1415(e)(1) and 1415(e)(8) of the Act. The Agency does not believe that this interpretation of the statute is appropriate since it is inconsistent with the Administrator's broad review authority provided in section 1415(e)(10)(A) of the Act.

The Act specifies two different and distinct procedures for reviewing and objecting to any proposed small system variance proposed by a State. Section 1415(e)(10)(A) of the Act addresses EPA review of "any" variance proposed by the State and its ability to object to "any" proposed variance. Section 1415(e)(10)(B) of the Act addresses consumer petitions to the Administrator requesting that the Administrator exercise objection authority under section 1415(e)(10)(A) of the Act. Section 1415(e)(10)(B) does not limit EPA's authority to review and object to a proposed small system variance and is independent from the Administrator's authority under section 1415(e)(10)(A).

The Agency's interpretation of section 1415(e)(10) of the Act is not in conflict with section 1415(e)(1) and 1415(e)(8) of the Act. Section 1415(e)(1) allows the primacy agency to issue small system variances in accordance with the Act and regulations. EPA's review and/or objection to a small system variance does not diminish a State's responsibility to decide whether to issue a small system variance. Section 1415(e)(8) of the Act does not conflict with the Agency's ability to review and/or object to a small system variance. Section 1415(e)(8) solely addresses EPA's review of a State's variance program as a whole and is independent from EPA's authority under section 1415(e)(10)(A) to object to a specific proposed variance.

In addition, Congress mandated under section 1415(e)(9) that the State submit for review and approval by the Administrator any small system variance proposed for a system serving more than 3,300 and fewer than 10,000 persons. Before a State grants a small system variance for a public water system serving this population, the Administrator must formally approve the variance. Without such approval, a State may not grant the variance. The Administrator's approval of variances under section 1415(e)(9) of the Act is independent from the Administrator's authority to review "any" variance under section 1415(e)(10) of the Act.

Section 142.311(a) of the regulations, which requires that the State submit the proposed small system variance and all supporting information to the Administrator, is necessary to implement section 1415(e)(10)(A) of the Act, which allows the Administrator to review and object to any proposed small system variance. Section 142.311(b) of the regulation is simply the codification of section 1415(e)(10)(A) of the Act included in the regulation for purposes of clarity.

H. Section 142.313. Bases for Administrator's Review of State Small System Variance Program

Pursuant to section 1415(e)(8)(A) of the Safe Drinking Water Act, § 142.313 of the rule requires the Administrator to periodically review the primacy State's

variance program to determine whether variances granted by the State comply with the requirements of the Act. EPA received no comments on this section and is promulgating it as proposed.

I. General Variances: Time Limitation

Section 1415(a)(1)(A)(ii) of the Safe Drinking Water Act states that a schedule prescribed under a general variance must require compliance, by the public water system, with each maximum contaminant level or treatment technique requirement with respect to which the variance was granted, as expeditiously as practicable (as the State may reasonably determine) but sets no specific final date for compliance other than that in the compliance schedule. EPA requested comment on whether the Agency should specify a time-frame in the final rule, consistent with the time frame for small system variances in the Act. Commenters were generally opposed to this approach.

The Agency recognizes that in issuing a general variance the State has the flexibility to prescribe time frames within a schedule to reach compliance with the conditions of the variance and the Act, including installation of the best available technology. However, consistent with section 1415(e) of the Act, the Agency presumes that a reasonable time frame for public water systems to install the best available technology is within five years of granting of the variance. The Agency recognizes that there may be situations in which five years may not be a feasible time frame to install such technology. However, when such situations are presented, efforts must be made to ensure that the public be notified and involved in the variance process. Today's regulations require that if a State prescribes a schedule in a general variance that requires compliance beyond five years of the issuance date the State must (1) document its rationale for the extended compliance schedule, (2) discuss the rationale for the extended compliance schedule in the required public notice and opportunity for public hearing, and (3) provide the shortest practicable time schedule feasible under the circumstances. Such requirements are consistent with the theme of the 1996 Amendments to the Safe Drinking Water to maximize public participation in major decisions affecting drinking water. Under this approach, the State retains flexibility in determining the time frame for compliance under a general variance as expeditiously as practicable.

J. Relationship of Exemptions and Small System Variances

Under section 1416(b)(2)(D) of the Safe Drinking Water Act, a public water system may not receive an exemption under section 1416 if the system was granted a small system variance under section 1415(e) of the Act. The Act is silent on whether a small system variance under section 1415(e) may be issued after the issuance of an exemption under section 1416. In the proposal, EPA asked for comment on this and commenters were generally in favor of allowing a variance after an exemption. However, after consideration of public comment, policy considerations and the statutory framework in sections 1415(e) and 1416, the Agency believes that public water systems should generally not receive a variance after receiving an exemption for the same contaminant.

The Agency interprets section 1416(b)(1)(A) to require that the endpoint of a compliance schedule established under an exemption be full compliance with the maximum contaminant level or treatment technique for which the exemption was granted. During the stakeholders process and the public comment period, the Agency received comments indicating that the regulations should implement the exemption provisions of the Act to allow a public water system which has received an exemption to subsequently receive a variance for that same contaminant if it turns out that there is no affordable compliance technology for the system. While the final rule promulgated today does not explicitly prohibit the issuance of a variance after an exemption, EPA believes that it is generally inappropriate. Rather, EPA believes that the determination of whether there is an affordable compliance technology for the system should be made in the initial compliance options analysis. However, if, during the course of the compliance schedule established for a small public water system's exemption, the regulations for the contaminant for which the exemption was granted were revised and the MCL was made more stringent, then the system, with a new regulatory compliance date and new MCL, would have the option of seeking full compliance with the new MCL by the compliance date, seeking a small system variance or seeking an exemption.

Congress established two distinct mechanisms to allow systems regulatory alternatives. Exemptions were established to allow public water systems more time to comply with a newly promulgated national primary drinking water regulation under certain conditions. Under an exemption, under certain conditions, a small system may have up to 9 years, including extensions, to achieve full compliance. Small system variances were established to allow small public water systems up to a possible 5 years to install alternative technologies under certain conditions. Upon completion of the compliance options analysis, the public water system should know whether an exemption or small system variance is the proper route to pursue. If a small system cannot afford to install a small system technology within the maximum allowable 5-year period, the primacy agency must consider other alternatives to address the noncompliance of the system. To grant a small system variance after an exemption could prolong the installation of the proper treatment technology well beyond the statutory time frames provided for either an exemption or a variance. Therefore, the Agency believes that it is generally inappropriate to grant a small system variance after an exemption.

The Agency also notes that, for a primacy agency to grant a small system variance, it must determine that compliance with the MCL is not affordable, according to the primacy agency's affordability criteria, through treatment, alternate sources of water supply, restructuring or consolidation, or obtaining financial assistance from the drinking water State Revolving Fund (SRF) or any other Federal or State program. In contrast, an exemption must include a schedule to achieve compliance within three years (with up to three two-year extensions for small systems in some circumstances). EPA believes that it would generally be difficult for a primacy agency to determine that compliance with the MCL is not affordable for a system that had previously been granted an exemption, unless there has been a significant unforeseen change in circumstances since the initial compliance options analysis upon which the exemption was based. By "unforeseen changes in circumstances" that may cause a primacy agency to determine that a system cannot afford to comply after an initial compliance determination, EPA means the following circumstances:

(1) Significant changes in source water due to natural disasters in the community;

(2) Small public water systems or primacy agencies could not have reasonably obtained all information related to source water quality and the absence of such information le i to an improper determination that an

exemption, as opposed to a small system variance, should be granted;

(3) Significant unforeseen change in economic circumstances, such as a severe economic downturn in the community, which would make the cost of the compliance technology unaffordable according to the primacy agency's affordability criteria. Failure to obtain funding from any particular source (e.g., State or Federal assistance program) would not automatically indicate that the compliance technology is unaffordable. The primacy agency should consider all financial circumstances, including alternate funding sources, in determining affordability; or,

(4) The public water system installs and is properly operating the best available technology, as designated by the Administrator, and is in compliance with all other requirements of the Act and regulations, but continues to be in non-compliance with the MCL or treatment technique for which the exemption was granted.

If such a change should occur, and a system will not be able to comply with the MCL within the established time frame, the system should notify the primacy agency immediately, rather than waiting for the next compliance deadline to pass, and the primacy agency should take appropriate action. The Agency believes that the most appropriate mechanism to address such a system is through an administrative order or consent order allowing the small system to install a small system variance technology, as designated by the Administrator, as an interim measure toward achieving full compliance in the future. Regardless of the mechanism selected, however, the primacy agency must ensure that the terms of any variance or order provide adequate protection of public health.

K. State Revolving Fund and Capacity Development Plan Linkage to Exemptions and Small System Variances

Strong statutory linkage exists between the small system variance and exemption provisions in sections 1415(e) and 1416 of the Safe Drinking Water Act and the State Revolving Fund provisions of section 1452 of the Act. This linkage was discussed in the proposal (63 FR 19448). The State Revolving Fund provisions and the variance and exemption provisions can be used together to complete two important tasks: (1) Ensure that State Revolving Fund assistance is targeted toward those public water systems most in need of such assistance, and (2) allow systems which receive such assistance to be able to use it in a way that will either produce full compliance with an MCL within the compliance schedule established by the State (in the case of systems receiving an exemption), or improve the quality of water delivered to consumers (in the case of systems receiving a variance).

This linkage is reflected in today's final rule. Section 142.20(b)(1) requires that before finding that management and restructuring changes cannot be made, as part of the compliance options analysis required for an exemption, the State must consider the availability of SRF loan fund assistance to implement, among other alternatives, activities consistent with the State's Capacity Development Strategy to help the public water system acquire and maintain technical, financial and managerial capacity to come into compliance with the Act. Section 142.306(b)(2)(iv) requires consideration of the possibility of obtaining financial assistance from the drinking water SRF as part of the compliance options analysis required for a small system variance.

Commenters expressed two concerns with these provisions. One commenter was concerned that the provisions not be interpreted in a way that would undermine State authority to develop individual Capacity Development Strategies in accordance with section 1420 of the Act, or used as grounds for withholding SRF funds because of a State decision regarding a particular system. EPA is well aware that under section 1420(c)(4) of the Act, State decisions regarding implementation of the Capacity Development Strategy with respect to individual systems are not subject to review by the Administrator and may not serve as the basis of withholding funds under section 1452 of the Act. EPA has no intention of using its oversight of the variance and exemption provisions of the Act as grounds for withholding funds under section 1452 of the Act, and does not see any conflict between these rules and State authority with respect to Capacity Development Strategies under section 1420 of the Act. Rather, the linkages in these rules are provided to highlight a State's opportunity to use its Capacity Development Strategy to assist systems in acquiring the technical, financial and managerial capacity needed to either come into compliance with an MCL or treatment technique after an appropriate period of time, or to install and operate an appropriate variance technology.

Several commenters expressed concern with the requirement that the SRF be considered as a possible funding source as part of the compliance options analysis to obtain a small system variance. These commenters indicated that small systems may lack the overall capacity required to qualify for SRF loans, and that this requirement in today's rule could be interpreted as limiting State flexibility in managing its SRF programs. EPA does not believe that this is an issue. The requirement to consider the SRF as a possible funding source does not mean that the State must provide SRF assistance to a system seeking a variance (or exemption), only that this option should be considered as part of the initial compliance options analysis. States retain full authority to allocate SRF funds in accordance with the provisions of the Act. EPA believes that the requirement to consider the SRF as a possible funding source to assist small systems in achieving compliance is fully consistent with those provisions.

L. Exemption: Renewals for Small Systems

Under section 1416(b)(2)(A) of the Safe Drinking Water Act, an exemption issued to a public water system must prescribe a schedule requiring compliance by the system with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable (as the State may reasonably determine) but not later than three years after the otherwise applicable compliance date established in section 1412(b)(10). Section 1416(b)(2)(C) states "[i]n the case of a system which does not serve more than a population of 3,300 and which needs financial assistance for the necessary improvements, an exemption * * * may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps" to meet the requirements of the established compliance schedule.

The intensive compliance options analysis required, under § 142.20(b)(1) and § 142.50(a), to be performed before an exemption is initially granted should indicate whether an exemption is appropriate. If an exemption is appropriate after the compliance options analysis, the primacy agency should facilitate and work with the system to ensure compliance as soon as practicable, but within three years of the otherwise applicable compliance date, including providing financial assistance under section 1452 of the Act. Under § 142.20(b)(2) and § 142.56 of the rule, two-year extensions of exemptions pursuant to section 1416(b)(2)(C) of the Act may only be granted to systems which serve 3,300 or fewer people and which need financial assistance, and upon State review of the small system's

progress and the State's subsequent determination that the small system is taking all practicable steps to meet the requirements of the Act.

As discussed in the preamble to the proposed rule, the Agency interprets the extension provisions for public water systems serving less than 3,300 persons to allow the primacy agency to grant the additional two-year periods at the time of initial issuance of the exemption for those small systems that need financial assistance for the necessary improvements. Public comments on this issue in the proposed rule were generally supportive of this approach..

This interpretation is based on the statute and EPA's recognition that there may be some instances where certain small systems serving less than 3,300 persons may require more than three years to achieve full compliance under an exemption. Additional time may allow for the small system to acquire the necessary financial assistance, restructure, find an alternative source water and/or make necessary capital improvements. Compliance schedules under exemptions should reflect a practical time line for the small public water system to meet the established milestones as expeditiously as possible. The Agency anticipates that most small systems will achieve full compliance under exemptions in less than 3 years after the otherwise applicable compliance date but recognizes that this determination should be made on a case-by-case basis considering specific factors of the given small public water system. Therefore, a system which serves less than 3,300 persons and which needs financial assistance for the necessary improvements may receive a compliance schedule under an exemption with milestone dates later than three years from the issuance date of the exemption. In any case, the primacy agency is required to establish a schedule requiring compliance as expeditiously as practicable but no later than the statutory time frames.

This interpretation does not affect the requirement under section 1416(b)(2)(C) of the Act that the primacy agency must "renew" the exemption every two years after the first 3 years to ensure that the system is taking all practicable steps to meet the requirements of the Act and the established compliance schedule. EPA interprets the "renewal" requirement to mean that the primacy agency must review the system's compliance with the exemption and document its findings of continued eligibility. The Agency anticipates that the primacy agency's review of the public water system will involve a review of the public water system's efforts to comply with the established milestones and other requirements of the Act. Even though not required by section 1416 of the Act, the primacy State may wish to consider the incorporation of public participation into this review process. If the primacy agency determines that a small system is not taking all practical steps to comply with the requirements, the exemption should not be continued and the public water system would be subject to an enforcement response to address violations of the established compliance schedule. Where an exemption is continued, the primacy agency must ensure that at the end of the exemption period, the public water system is in full compliance with applicable national primary drinking water regulation.

The Agency received public comments requesting that the Agency clarify how the 6-year limit on renewals of exemptions for small systems applies to existing exemptions issued before enactment of the 1996 Amendments. As discussed above, under section 1416(b)(2)(C), a State may renew an exemption issued to a small system serving less than 3,300 persons for one or more additional 2-year periods under certain conditions, but not to exceed a total of 6 years. The Agency interprets this provision to be effective upon the effective date of the 1996 Amendments to the Safe Drinking Water Act. Therefore, the six-year limit on renewals of exemptions is effective as of August 6, 1996. Therefore, for example, if a three-year, small system exemption was issued by a primacy agency in 1993, the primacy agency may, under certain conditions as specified in the Act, renew the exemption, through extensions and the requisite reviews, until 2002. No existing exemption for a small system may remain in effect for more than nine years beyond the date that it was initially issued.

IV. Cost of Rule

The cost of the rule and economic analysis were described in detail in the preamble to the proposed rule. (63 FR 19448–50)

Based upon this economic impact analysis (EIA), public water systems would realize net economic benefits as a result of today's rule. Results of the impact analysis show that, if all eligible public water systems in all 56 States and territories apply for and are granted variances under sections 1415(a) or 1415(e), or exemptions under today's rule, for the rules considered in this analysis, then the regulation will show a net annualized economic benefit of $573,706 to the Agency, States, and public water systems, not including benefits due to increased public health protection or savings associated with the installation of affordable technologies. A summary of this EIA is available in the Office of Water Docket, #W–97–26.

Based on this economic impact analysis, the variance and exemption rule is not considered to have a significant impact in the form of an unfunded mandate of $100,000,000 or more or in any year as identified under the Unfunded Mandates Reform Act, nor would it have a significant adverse economic impact on a substantial number of small entities, as discussed in the section entitled "Unfunded Mandates Reform Act" in the preamble to today's rule.

V. Other Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget 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 the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it may raise novel legal or policy issues. The rule seeks to improve public health protection while providing regulatory relief to small systems by encouraging the adoption. by small systems unable to comply with drinking water standards, of affordable technologies that will improve the quality of their water even if they do not achieve full compliance with the MCL or treatment technique requirement for a particular contaminant. Therefore, EPA submitted this action to OMB for

review. Substantive changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), generally requires the Agency to consider explicitly the effect of regulations on small entities. However, under section 605(b) of the RFA, if the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, the Agency is not required to prepare an RFA.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Regulations on variances and exemptions provide regulatory relief from the costs of complying with a maximum contaminant level or a treatment technique under a given national primary drinking water regulation. As directed in the Safe Drinking Water Act, this rule describes procedures and criteria by which small public water systems which cannot afford the appropriate treatment to comply with a given national primary drinking water regulation can receive a variance or exemption. Thus, public water systems show a net economic benefit under today's rule as a result of being granted a variance or exemption, rather than bear process costs associated with litigation and enforcement. Please see section IV, "Cost of Rule", in the preamble to the proposed rule (63 FR 19448–50) for a more detailed discussion of the economic costs and benefits of today's rule.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 270.39) to amend the current public Water System Supervision Program ICR (OMB control number 2040–0090), and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

Information required by this regulation allows the State or the Administrator to determine that the circumstances at a public water system satisfy the statutory conditions for granting a small system variance or an exemption. Some of the required information allows the Administrator and the public to determine that the public had adequate opportunity to review and comment on a decision to grant a small system variance. The information collection requirements of this rule are mandatory for public water systems applying for either a variance or an exemption and for primacy States that review and either grant or deny these applications. Information collected by this rule will be provided to the public to facilitate public involvement in this process.

Although it is impossible to determine the burden this rule would impose with respect to seeking a variance or an exemption from a drinking water regulation not yet promulgated, EPA did estimate the burden with respect to the two regulations from which a variance or exemption may hypothetically be sought. With respect to the lead and copper rule and the phase II/V rule, the distribution of burden between public water systems and states is approximately 13,050 hours and 109,080 hours respectively, for a total annualized burden of 122,130 hours. Expressed another way, in a monetization of these hours, all public water systems would bear a total annual cost of approximately $348,716, while States would bear an annual cost of $5,041,694.

Promulgation of this rule, however, is also expected to result in significant reductions in the burden associated with litigation and enforcement actions. EPA has estimated that public water systems would reduce their annual burden by 54,648 hours or by $3,342,616 (a monetization of these hours). States would reduce their annual burden by 62,766 hours or by $2,863,321 (a monetization of these hours). The projected burden reduction has not been netted out of the burden estimate in the ICR because the Agency does not generally include litigation and enforcement actions in its paperwork burden estimates for the Public Water Supply Supervision Program. A more detailed explanation of how EPA calculated these results can be found in the Information Collection Request. 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.

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.

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 Director, OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Comments are requested by September 14, 1998. Include the ICR number in any correspondence.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Tribal, and local governments and the private sector. Under section 202 of the UMRA, the Agency generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, Tribal, and local governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an Agency rule for which a written statement is needed, section 205 of the UMRA generally requires the Agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves

the objectives of the rule. The provisions of section 205 of the UMRA do not apply when they are inconsistent with applicable law. Moreover, section 205 of the UMRA allows the Agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before the Agency establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of Agency regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This rule imposes no enforceable duty on any State, local or tribal governments or the private sector. States or Tribes may choose whether to acquire or maintain primacy under the Safe Drinking Water Act. Further, States and Tribes with primacy may choose whether to issue variances and exemptions; they can decide to not issue any exemptions or variances at all. If they choose to issue variances or exemptions, they are only required to issue variances and exemptions in a manner not less stringent than the conditions under, and the manner in which, variances and exemptions may be granted under section 1415 and 1416 of the SDWA. Thus, today's rule is not subject to the requirements of section 202 and 205 of the UMRA.

Moreover, because this rule establishes procedures and criteria for public water systems to obtain variances and exemptions from Safe Drinking Water Act requirements, the Agency has determined that this rule contains no regulatory requirements that might significantly or uniquely adversely affect small governments and thus this rule is not subject to the requirement of section 203 of UMRA.

E. Enhancing Intergovernmental Partnerships

To reduce the burden of Federal regulations on States and small governments, the President issued Executive Order 12875, entitled Enhancing the Intergovernmental Partnership, on October 28, 1993 (48 FR 58093). Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government unless the Federal government provides the necessary funds to pay the direct costs incurred by the State, local or Tribal government or EPA provides to the Office of Management and Budget a description of the extent of the Agency's prior consultation and written communications with elected officials and other representatives of affected State, local and Tribal governments, the nature of their concerns, and an Agency statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

As described in the preamble to the proposed rule (63 FR 19440–41), the Agency held several meetings with a wide variety of State and local representatives, who provided meaningful and timely input toward the development of the proposed rule. Summaries of these meetings have been included in the public docket for this rulemaking. In addition, the Agency conducted outreach efforts to contact and inform Tribal groups regarding this rulemaking.

F. Risk to Children Analysis and Environmental Justice

On April 21, 1997, the President issued Executive Order 13045 entitled Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19883). Under section 5 of the Order, a Federal agency submitting a "covered regulatory action" to OMB for review under Executive Order 12866 must provide information regarding the environmental health or safety effects of the planned regulation on children. A "covered regulatory action" is defined in section 2–202 as a substantive action in a rulemaking that (a) is likely to result in a rule that may be economically significant" under Executive Order 12866 and (b) concerns an environmental health risk or safety risk that an agency has reason to believe may disproportionally affect 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. While this rule is not a " covered regulatory action" as defined in the Order because it is not economically significant (see section IV above), EPA believes that the rule has the potential to reduce risks to children, as discussed in more detail below.

In addition, under Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", dated February 11, 1994, the Agency must make achieving environmental justice part of its mission.

The Agency believes that this rule has the potential to significantly reduce risks to children caused by inadequate drinking water and address environmental justice problems. After a small public water system applies for a small system variance, § 142.306(b) of the rule requires the State to perform a compliance options analysis for the system. Small noncompliant public water systems are often financially distressed as a result of the service population's inability to pay for safe drinking water and other factors. The public water system could have unprotected source waters or be unable to afford the appropriate treatment technology or technique, certified operator, and/or adequate transmission and distribution systems. As required by § 142.306(b) of the rule, an analysis of the applicant system's compliance options will provide insight into alternative means of compliance. This might include some form of restructuring or consolidation with another system, development of a cleaner, safer water source, or using some alternative treatment technique or technology.

If according to a State's affordability criteria, these compliance options are unaffordable for a drinking water system, the State may grant the system a variance. Prior to issuing a variance, § 142.306(b)(5) of the rule requires that the State find that the terms and conditions of a small system variance ensure "adequate protection of human health." Similarly, an exemption can only be granted if its conditions ensure that there is no "unreasonable risk to health." Both findings are made at the State level on a case-specific basis.

The intent of the small system variance subpart of the rule is to move a system, which is not complying with Safe Drinking Water Act standards because the treatment required is unaffordable, toward or into compliance

status by requiring the system to install, operate and maintain treatment which is affordable and protective of human health. Although the level of treatment provided may not meet the maximum contaminant level, it must be determined to be protective of human health—both by the Agency in identifying the approved variance technology and by the primacy State in making such a finding—if the variance is granted.

The Agency believes that a system operating under a small system variance will provide better treatment than that provided by a system in noncompliance. Although the drinking water system may not be able to provide water that is consistently below the maximum contaminant level, a water system operating under a variance will be able to create a net gain in the quality of its finished water above what it could provide before installing a variance technology. In turn, this will lead to a net gain in public health protection for infants, children, and nursing or pregnant women as well as for persons in low-income areas, thus protecting children's health as well as alleviating environmental justice problems.

In addition to requirements that ensure public participation in granting variances and exemptions, section 142.308(c)(7) of the rule requires that, in communities with a large proportion of non-English speaking persons, as defined by the primacy agency, notices provided to the public must include information in the appropriate language regarding the content and importance of the notice. EPA believes that this provision also addresses Executive Order 12898.

For these reasons, the Agency believes that this rule is consistent with, and implements, the Executive Order on protecting children as well as the Executive Order addressing environmental justice.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by the Agency, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. Because this rule is procedural and does not involve or require the use of any technical standards, the Agency does not believe that this Act is applicable to this rule. Moreover, the Agency is unaware of any voluntary consensus standards relevant to this rulemaking. Therefore, even if the Act were applicable to this kind of rulemaking, the Agency does not believe that there are any "available or potentially applicable" voluntary consensus standards.

H. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as enacted under the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on September 14, 1998.

VI. Response to Public Comments

The record for this rulemaking has been established under docket number W–97–26, and includes the Agency's response to all comments submitted, supporting documentation, and copies of comments received, including printed paper versions of electronic comments.

List of Subjects in 40 CFR Parts 141 and 142

Environmental protection, Administrative practice and procedures, Chemicals, Indian-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: August 6, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency amends 40 CFR parts 141 and 142 as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 is revised to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.4(a) is revised to read as follows:

§ 141.4 Variances and exemptions.

(a) Variances or exemptions from certain provisions of these regulations may be granted pursuant to sections 1415 and 1416 of the Act and subpart K of part 142 of this chapter (for small system variances) by the entity with primary enforcement responsibility, except that variances or exemptions from the MCL for total coliforms and variances from any of the treatment technique requirements of subpart H of this part may not be granted.

* * * * *

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

3. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

4. Section 142.10 is amended by revising paragraph (d) to read as follows:

§ 142.10 Requirements for a determination of primary enforcement responsibility.

* * * * *

(d) Variances and exemptions.

(1) If it permits small system variances pursuant to Section 1415(e) of the Act, it must provide procedures no less stringent than the Act and Subpart K of this part.

(2) If it permits variances (other than small system variances) or exemptions, or both, from the requirements of the State primary drinking water regulations, it shall do so under conditions and in a manner no less stringent than the requirements of Sections 1415 and 1416 of the Act. In granting these variances, the State must adopt the Administrator's findings of best available technology, treatment techniques, or other means available as specified in Subpart G of this part. (States with primary enforcement responsibility may adopt procedures different from those set forth in Subparts E and F of this part, which apply to the issuance of variances (other than small system variances) and exemptions by the Administrator in States that do not have primary enforcement responsibility, provided that the State procedures meet the requirements of this paragraph); and

* * * * *

5. Section 142.20 is revised to read as follows:

§ 142.20 State-issued variances and exemptions under Section 1415(a) and Section 1416 of the Act.

(a) States with primary enforcement responsibility may issue variances to public water systems (other than small system variances) from the requirements of primary drinking water regulations under conditions and in a manner which are not less stringent than the requirements under Section 1415(a) of the Act. In States that do not have primary enforcement responsibility, variances may be granted by the Administrator pursuant to Subpart E of this part.

(1) A State must document all findings that are required under Section 1415(a) of the Act.

(2) If a State prescribes a schedule pursuant to section 1415(a) of the Act requiring compliance with a contaminant level for which the variance is granted later than five years from the date of issuance of the variance the State must—

(i) Document its rationale for the extended compliance schedule;

(ii) Discuss the rationale for the extended compliance schedule in the required public notice and opportunity for public hearing; and

(iii) Provide the shortest practicable time schedule feasible under the circumstances.

(b) States with primary enforcement responsibility may issue exemptions from the requirements of primary drinking water regulations under conditions and in a manner which are not less stringent than the requirements under Section 1416 of the Act. In States that do not have primary enforcement responsibility, exemptions may be granted by the Administrator pursuant to Subpart F of this part.

(1) A State must document all findings that are required under Section 1416 of the Act:

(i) Before finding that management and restructuring changes cannot be made, a State must consider the following measures, and the availability of State Revolving Loan Fund assistance, or any other Federal or State program, that is reasonably likely to be available within the period of the exemption to implement these measures:

(A) Consideration of rate increases, accounting changes, the appointment of a State-certified operator under the State's Operator Certification program, contractual agreements for joint operation with one or more public water systems;

(B) Activities consistent with the State's Capacity Development Strategy to help the public water system acquire and maintain technical, financial, and managerial capacity to come into compliance with the Act; and

(C) Ownership changes, physical consolidation with another public water system, or other feasible and appropriate means of consolidation which would result in compliance with the Act;

(ii) The State must consider the availability of an alternative source of water, including the feasibility of partnerships with neighboring public water systems, as identified by the public water system or by the State consistent with the Capacity Development Strategy.

(2) In the case of a public water system serving a population of not more than 3,300 persons and which needs financial assistance for the necessary improvements under the initial compliance schedule, an exemption granted by the State under section 1416(b)(2)(B)(i) or (ii) of the Act may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 additional years, only if the State establishes that the public water system is taking all practicable steps to meet the requirements of Section 1416(b)(2)(B) of the Act and the established compliance schedule to achieve full compliance with the contaminant level or treatment technique for which the exemption was granted. A State must document its findings in granting an extension under this paragraph.

Subpart E—Variances Issued by the Administrator Under Section 1415(a) of the Act

6. The heading for Subpart E is revised to read as set forth above.

7. Section 142.42 is amended by revising paragraph (c) to read as follows:

§ 142.42 Consideration of a variance request.

* * * * *

(c) A variance may be issued to a public water system on the condition that the public water system install the best technology, treatment techniques, or other means, which the Administrator finds are available (taking costs into consideration) and based upon an evaluation satisfactory to the Administrator that indicates that alternative sources of water are not reasonably available to the public water system.

* * * * *

Subpart F—[Amended]

8. Section 142.50 is revised to read as follows:

§ 142.50 Requirements for an exemption.

(a) The Administrator may exempt any public water system within a State that does not have primary enforcement responsibility from any requirement regarding a maximum contaminant level or any treatment technique requirement, or from both, of an applicable national primary drinking water regulation upon a finding that—

(1) Due to compelling factors (which may include economic factors, including qualification of the public water system as a system serving a disadvantaged community pursuant to section 1452(d) of the Act), the public water system is unable to comply with such contaminant level or treatment technique requirement or to implement measures to develop an alternative source of water supply;

(2) The public water system was in operation on the effective date of such contaminant level or treatment technique requirement, or for a public water system that was not in operation by that date, no reasonable alternative source of drinking water is available to such new public water system;

(3) The granting of the exemption will not result in an unreasonable risk to health; and

(4) Management or restructuring changes (or both), as provided in § 142.20(b)(1)(i), cannot reasonably be made that will result in compliance with the applicable national primary drinking water regulation or, if compliance cannot be achieved, improve the quality of the drinking water.

(b) No exemption shall be granted unless the public water system establishes that the public water system is taking all practicable steps to meet the standard; and

(1) The public water system cannot meet the standard without capital improvements which cannot be completed prior to the date established pursuant to Section 1412(b)(10) of the Act;

(2) In the case of a public water system which needs financial assistance for the necessary improvements, the public water system has entered into an agreement to obtain such financial assistance or assistance pursuant to Section 1452 of the Act, or any other Federal or State program that is reasonably likely to be available within the period of the exemption; or

(3) The public water system has entered into an enforceable agreement to

become a part of a regional public water system.

(c) A public water system may not receive an exemption under this subpart if the public water system was granted a variance under Section 1415(e) of the Act.

9. Section 142.53 is amended by revising paragraph (c)(1) to read as follows:

§ 142.53 Disposition of an exemption request.

* * * * *

(c) * * *

(1) Compliance (including increments of progress or measures to develop an alternative source of water supply) by the public water system with each contaminant level requirement or treatment technique requirement with respect to which the exemption was granted; and

* * * * *

10. Section 142.55 is amended by revising paragraph (b) and removing and reserving paragraph (c) to read as follows:

§ 142.55 Final Schedule.

* * * * *

(b) Such schedule must require compliance with each contaminant level and treatment technique requirement with respect to which the exemption was granted as expeditiously as practicable but not later than 3 years after the otherwise applicable compliance date established in section 1412(b)(10) of the Act.

(c) [Reserved].

11. Section 142.56 is revised to read as follows:

§ 142.56 Extension of date for compliance.

In the case of a public water system which serves a population of not more than 3,300 persons and which needs financial assistance for the necessary improvements, an exemption granted under § 142.50(b) (1) or (2) may be renewed for one or more additional 2-year periods, but not to exceed a total of 6 additional years, if the public water system establishes that the public water system is taking all practicable steps to meet the requirements of section 1416(b)(2)(B) of the Act and the established compliance schedule.

12. Subpart K is added to read as follows:

Subpart K—Variances for Small System

Sec.

General Provisions

Review of Small System Variance Application

Public Participation

EPA Review and Approval of Small System Variances

Subpart K—Variances for Small System

General Provisions

§ 142.301 What is a small system variance?

Section 1415(e) of the Act authorizes the issuance of variances from the requirement to comply with a maximum contaminant level or treatment technique to systems serving fewer than 10,000 persons. The purpose of this subpart is to provide the procedures and criteria for obtaining these variances. The regulations in this subpart shall take effect on September 14, 1998.

§ 142.302 Who can issue a small system variance?

A small system variance under this subpart may only be issued by either:

(a) A State that is exercising primary enforcement responsibility under Subpart B for public water systems under the State's jurisdiction; or

(b) The Administrator, for a public water system in a State which does not have primary enforcement responsibility.

§ 142.303 Which size public water systems can receive a small system variance?

(a) A State exercising primary enforcement responsibility for public water systems (or the Administrator for other systems) may grant a small system variance to public water systems serving 3,300 or fewer persons.

(b) With the approval of the Administrator pursuant to § 142.312, a State exercising primary enforcement responsibility for public water systems may grant a small system variance to public water systems serving more than 3,300 persons but fewer than 10,000 persons.

(c) In determining the number of persons served by the public water system, the State or Administrator must include persons served by consecutive systems. A small system variance granted to a public water system would also apply to any consecutive system served by it.

§ 142.304 For which of the regulatory requirements is a small system variance available?

(a) A small system variance is not available under this subpart for a national primary drinking water regulation for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

(b) A small system variance under this subpart is otherwise only available for compliance with a requirement specifying a maximum contaminant level or treatment technique for a contaminant with respect to which;

(1) a national primary drinking water regulation was promulgated on or after January 1, 1986; and

(2) the Administrator has published a small system variance technology pursuant to Section 1412(b)(15) of the Act.

Note to paragraph (b)(1): Small system variances are not available for public water systems above the pre-1986 maximum contaminant level even if subsequently revised. If the Agency revises a pre-1986 maximum contaminant level and makes it more stringent, then a variance would be available for that contaminant, but only up to the pre-1986 maximum contaminant level.

§ 142.305 When can a small system variance be granted by a State?

No small system variance can be granted by a State until the later of the following:

(a) 90 days after the State proposes to grant the small system variance;

(b) If a State is proposing to grant a small system variance to a public water system serving 3,300 or fewer persons and the Administrator objects to the small system variance, the date on which the State makes the recommended modifications or responds in writing to each objection; or

(c) If a State is proposing to grant a small system variance to a public water system serving a population more than 3,300 and fewer than 10,000 persons, the date the Administrator approves the small system variance. The Administrator must approve or disapprove the variance within 90 days after it is submitted to the Administrator for review.

Review of Small System Variance Application

§ 142.306 What are the responsibilities of the public water system, State and the Administrator in ensuring that sufficient information is available and for evaluation of a small system variance application?

(a) A public water system requesting a small system variance must provide accurate and correct information to the State or the Administrator to issue a small system variance in accordance with this subpart. A State may assist a public water system in compiling information required for the State or the Administrator to issue a small system variance in accordance with this subpart.

(b) Based upon an application for a small system variance and other information, and before a small system variance may be proposed under this subpart, the State or the Administrator must find and document the following:

(1) The public water system is eligible for a small system variance pursuant to §§ 142.303 (i.e., the system serves a population of fewer than 10,000 persons) and 142.304 (i.e., the contaminant for which the small system variance is sought is not excluded from variance eligibility);

(2) The public water system cannot afford to comply, in accordance with the affordability criteria established by the State (or by the Administrator in States which do not have primary enforcement responsibility), with the national primary drinking water regulation for which a small system variance is sought, including by:

(i) Treatment;

(ii) Alternative sources of water supply;

(iii) Restructuring or consolidation changes, including ownership change and/or physical consolidation with another public water system; or

(iv) Obtaining financial assistance pursuant to Section 1452 of the Act or any other Federal or State program;

(3) The public water system meets the source water quality requirements for installing the small system variance technology developed pursuant to guidance published under section 1412(b)(15) of the Act;

(4) The public water system is financially and technically capable of installing, operating and maintaining the applicable small system variance technology; and

(5) The terms and conditions of the small system variance, as developed through compliance with § 142.307, ensure adequate protection of human health, considering the following:

(i) The quality of the source water for the public water system; and

(ii) Removal efficiencies and expected useful life of the small system variance technology.

§ 142.307 What terms and conditions must be included in a small system variance?

(a) A State or the Administrator must clearly specify enforceable terms and conditions of a small system variance.

(b) The terms and conditions of a small system variance issued under this subpart must include, at a minimum, the following requirements:

(1) Proper and effective installation, operation and maintenance of the applicable small system variance technology in accordance with guidance published by the Administrator pursuant to section 1412(b)(15) of the Act, taking into consideration any relevant source water characteristics and any other site-specific conditions that may affect proper and effective operation and maintenance of the technology;

(2) Monitoring requirements, for the contaminant for which a small system variance is sought, as specified in 40 CFR part 141; and

(3) Any other terms or conditions that are necessary to ensure adequate protection of public health, which may include:

(i) Public education requirements; and

(ii) Source water protection requirements.

(c) The State or the Administrator must establish a schedule for the public water system to comply with the terms and conditions of the small system variance which must include, at a minimum, the following requirements:

(1) Increments of progress, such as milestone dates for the public water system to apply for financial assistance and begin capital improvements;

(2) Quarterly reporting to the State or Administrator of the public water system's compliance with the terms and conditions of the small system variance;

(3) Schedule for the State or the Administrator to review the small system variance under paragraph (d) of this section; and

(4) Compliance with the terms and conditions of the small system variance as soon as practicable but not later than 3 years after the date on which the small system variance is granted. The Administrator or State may allow up to 2 additional years if the Administrator or State determines that additional time is necessary for the public water system to:

(i) Complete necessary capital improvements to comply with the small system variance technology, secure an alternative source of water, or restructure or consolidate; or

(ii) Obtain financial assistance provided pursuant to section 1452 of the Act or any other Federal or State program.

(d) The State or the Administrator must review each small system variance granted not less often than every 5 years after the compliance date established in the small system variance to determine whether the public water system continues to meet the eligibility criteria and remains eligible for the small system variance and is complying with the terms and conditions of the small system variance. If the public water system would no longer be eligible for a small system variance, the State or the Administrator must determine whether continuing the variance is in the public interest. If the State or the Administrator finds that continuing the variance is not in the public interest, the variance must be withdrawn.

Public Participation

§ 142.308 What public notice is required before a State or the Administrator proposes to issue a small system variance?

(a) At least fifteen (15) days before the date of proposal, and at least thirty (30) days prior to a public meeting to discuss the proposed small system variance, the State, Administrator, or public water system as directed by the State or Administrator, must provide notice to all persons served by the public water system. For billed customers, identified in paragraph (a)(1) of this section, this notice must include the information listed in paragraph (c) of this section. For other persons regularly served by the system, identified in paragraph (a)(2) of this section, the notice shall include the information identified in paragraph (d) of this section. Notice must be provided to all persons served by:

(1) Direct mail or other home delivery to billed customers or other service connections, and

(2) Any other method reasonably calculated to notify, in a brief and concise manner, other persons regularly served by the system. Such methods may include publication in a local newspaper, posting in public places or delivery to community organizations.

(b) At the time of proposal, the State must publish a notice in the State equivalent to the **Federal Register** or a newspaper or newspapers of wide circulation in the State, or, in the case of the Administrator, in the **Federal Register**. This notice shall include the information listed in paragraph (c) of this section.

(c) The notice in paragraphs (a)(1) and (b) of this section must include, at a minimum, the following:

(1) Identification of the contaminant[s] for which a small system variance is sought;

(2) A brief statement of the health effects associated with the contaminant[s] for which a small system variance is sought using language in Appendix C of Part 141 Subpart O of this chapter;

(3) The address and telephone number at which interested persons may obtain further information concerning the contaminant and the small system variance;

(4) A brief summary, in easily understandable terms, of the terms and conditions of the small system variance;

(5) A description of the consumer petition process under § 142.310 and information on contacting the EPA Regional Office;

(6) a brief statement announcing the public meeting required under § 142.309(a), including a statement of the purpose of the meeting, information regarding the time and location for the meeting, and the address and telephone number at which interested persons may obtain further information concerning the meeting; and

(7) In communities with a large proportion of non-English-speaking residents, as determined by the primacy agency, information in the appropriate language regarding the content and importance of the notice.

(d) The notice in paragraph (a)(2) of this section must provide sufficient information to alert readers to the proposed variance and direct them where to receive additional information.

(e) At its option, the State or the Administrator may choose to issue separate notices or additional notices related to the proposed small system variance, provided that the requirements in paragraphs (a) through (d) of this section are satisfied.

(f) Prior to promulgating the final variance, the State or the Administrator must respond in writing to all significant public comments received relating to the small system variance. Response to public comment and any other documentation supporting the issuance of a variance must be made available to the public after final promulgation.

§ 142.309 What are the public meeting requirements associated with the proposal of a small system variance?

(a) A State or the Administrator must provide for at least one (1) public meeting on the small system variance no later than 15 days after the small system variance is proposed.

(b) At the time of the public meeting, the State or Administrator must prepare and make publicly available, in addition to the information listed in § 142.308(c), either:

(1) The proposed small system variance, if the public meeting occurs after proposal of the small system variance; or

(2) A draft of the proposed small system variance, if the public meeting occurs prior to proposal of the proposed small system variance.

(c) Notice of the public meeting must be provided in the manner required under § 142.308 at least 30 days in advance of the public meeting. This notice must be provided by the State, the Administrator, or the public water system as directed by the State or Administrator.

§ 142.310 How can a person served by the public water system obtain EPA review of a State proposed small system variance?

(a) Any person served by the public water system may petition the Administrator to object to the granting of a small system variance within 30 days after a State proposes to grant a small system variance for a public water system.

(b) The Administrator must respond to a petition filed by any person served by the public water system and determine whether to object to the small system variance under § 142.311, no later than 60 days after the receipt of the petition.

EPA Review And Approval of Small System Variances

§ 142.311 What procedures allow the Administrator to object to a proposed small system variance or overturn a granted small system variance for a public water system serving 3,300 or fewer persons?

(a) At the time a State proposes to grant a small system variance under this subpart, the State must submit to the Administrator the proposed small system variance and all supporting information, including any written public comments received prior to proposal.

(b) The Administrator may review and object to any proposed small system variance within 90 days of receipt of the proposed small system variance. The Administrator must notify the State in writing of each basis for the objection and propose a modification to the small system variance to resolve the concerns of the Administrator. The State must make the recommended modification, respond in writing to each objection, or withdraw the proposal to grant the small system variance.

(c) If the State issues the small system variance without resolving the concerns of the Administrator, the Administrator may overturn the State decision to grant the variance if the Administrator determines that the State decision does not comply with the Act or this rule.

§ 142.312 What EPA action is necessary when a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons?

(a) At the time a State proposes to grant a small system variance to a public water system serving a population of more than 3,300 and fewer than 10,000 persons, the State must submit the proposed small system variance and all supporting information, including public comments received prior to proposal, to the Administrator.

(b) The Administrator must approve or disapprove the small system variance within 90 days of receipt of the proposed small system variance and supporting information. The Administrator must approve the small system variance if it meets each requirement within the Act and this rule.

(c) If the Administrator disapproves the small system variance, the Administrator must notify the State in writing of the reasons for disapproval and the small system variance does not become effective. The State may resubmit the small system variance for review and approval with modifications to address the objections stated by the Administrator.

§ 142.313 How will the Administrator review a State's program under this subpart?

(a) The Administrator must periodically review each State program under this subpart to determine whether small system variances granted by the State comply with the requirements of

the Act, this rule and the affordability criteria developed by the State.

(b) If the Administrator determines that small system variances granted by a State are not in compliance with the requirements of the Act, this rule or the affordability criteria developed by the State, the Administrator shall notify the State in writing of the deficiencies and make public the determinations.

(c) The Administrator's review will be based in part on quarterly reports prepared by the States pursuant to § 142.15(a)(1) relating to violations of increments of progress or other violated terms or conditions of small system variances.

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Federal Register

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August 14, 1998

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1998–99 Season; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE93

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1998–99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes special migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 1998–99 migratory bird hunting season.

DATES: The comment period for these proposed regulations will end on August 24, 1998.

ADDRESSES: Comments should be sent to: Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, ms 634-ARLSQ, 1849 C St., NW., Washington, DC 20240. The public may inspect comments received, if any, during normal business hours in Room 634-Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1838).

SUPPLEMENTARY INFORMATION: In the March 20, 1998, **Federal Register** (63 FR 13748), the Service requested proposals from Indian tribes wishing to establish special migratory bird hunting regulations for the 1998–99 hunting season, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The Service developed guidelines in response to tribal requests for recognition of their reserved hunting rights and, for some tribes, recognition of their authority to regulate hunting by both tribal and non-tribal members on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and non-tribal members, with hunting by non-tribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10 to September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines apply to those tribes having recognized reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and on ceded lands. They also apply to establishing migratory bird hunting regulations for non-tribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting or where the tribes and affected States otherwise have reached agreement over hunting by non-tribal members on lands owned by non-Indians within the reservation.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to Service approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, the Service encourages the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, the Service will consult with a tribe and State with the aim of facilitating an accord. The Service also will consult jointly with tribal and State officials in the affected States where tribes wish to establish special hunting regulations for tribal members on ceded lands.

Because of past questions regarding interpretation of what events trigger the consultation process, as well as who initiates it, the Service provides the following clarification. The Service routinely provides copies of **Federal Register** publications to all State Directors, tribes and other interested parties. It is the responsibility of the States, tribes and others to notify the Service of any concern regarding any feature(s) of any regulations to the attention of the Service. When the Service receives such notification, we will initiate consultation.

Service guidelines provide for the continued harvest of waterfowl and other migratory game birds by tribal members on reservations where it has been a customary practice. The Service does not oppose this harvest, provided it does not take place during the closed season defined by the 1916 Migratory Bird Convention with Canada, and does not adversely affect the status of the migratory bird resource.

Before developing the guidelines, the Service reviewed available information on the current status of migratory bird populations; reviewed the current status of migratory bird hunting on Federal Indian reservations; and evaluated the potential impact of such guidelines on migratory birds. The Service concluded that the impact of migratory bird harvest by tribal members hunting on their reservations is minimal.

One area of interest in Indian migratory bird hunting regulations relates to hunting seasons for non-tribal members on dates that are within Federal frameworks, but which are different from those established by the State(s) where the reservation is located. A large influx of non-tribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse population impacts on one or more migratory bird species. The guidelines make this unlikely, however, because tribal proposals must include:

(a) Harvest anticipated under the requested regulations;

(b) Methods that will be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

The Service may modify or establish regulations experimentally, after evaluation and confirmation of harvest information obtained by the tribes.

The Service believes the guidelines provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. The guidelines should not be viewed as inflexible. In this regard, the Service notes that they have been employed successfully since 1985. The Service believes they have been tested adequately and therefore, made them final beginning with the 1988–89 hunting season. It should be stressed here, however, that use of the guidelines is not mandatory and no action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

In summary, this document proposes 1998–99 season migratory bird hunting regulations for participating tribes.

Hunting Season Proposals From Indian Tribes and Organizations

For the 1998–99 hunting season, the Service received requests from nineteen tribes and Indian organizations appropriate for Federal Register publication. The Service actively solicits regulatory proposals from other tribal groups that are interested in working cooperatively for the benefit of waterfowl and other migratory game birds. The Service encourages tribes to work with us to develop agreements for management of migratory bird resources on tribal lands.

It should be noted that this proposed rule includes generalized regulations for both early- and late-season hunting. A final rule will be published in a late-August 1998 Federal Register that will include tribal regulations for the early-hunting season. The early season begins on September 1 each year and most commonly includes such species as mourning doves and white-winged doves. A final rule will also be published in a September 1998 Federal Register that will include regulations for late-season hunting. The late season begins on or around October 1 and most commonly includes waterfowl species.

In this current rulemaking, because of the compressed time frame for establishing regulations for Indian tribes and because final frameworks dates and other specific information are not available, the regulations for many tribal hunting seasons are described in relation to the season dates, season length and limits that will be permitted when final Federal frameworks are announced for early- and late-season regulations. For example, daily bag and possession limits for ducks on some areas are shown as "Same as permitted Pacific Flyway States under final Federal frameworks," and limits for geese will be shown as the same permitted by the State(s) in which the tribal hunting area is located.

The proposed frameworks for early-season regulations were published in the Federal Register on July 17, 1998 (63 FR 38700); early-season final frameworks will be published in mid-August. Proposed late-season frameworks for waterfowl and coots will be published in mid-August, and the final frameworks for the late seasons will be published in mid-September. The Service will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established. As previously discussed, no action is required by tribes wishing to observe migratory bird hunting regulations established by the State(s) where they are located.

The proposed regulations for the twenty tribes with proposals that meet the established criteria are shown below.

(a) Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona (Tribal Members and Non-Tribal Hunters)

The Colorado River Indian Reservation is located in Arizona and California. The tribes own almost all lands on the reservation, and have full wildlife management authority.

In their 1998–99 proposal, dated May 21, 1998, the Colorado River Indian Tribes requested split dove seasons. They propose their early season begin September 1 and end September 15, 1998. Daily bag limits would be 10 mourning or 10 white-winged doves either singly or in the aggregate. The late season for doves is proposed to open November 21, 1998, and close January 4, 1999. A daily bag limit would be 10 mourning doves. The possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to noon. Other special tribally set regulations would apply.

The tribes also propose duck hunting seasons. The season would open on a Saturday and run for the maximum number of days allowed under the Pacific Flyway frameworks through January 17, 1998. The tribes propose the same season dates for coots and common moorhens. The daily bag limit for ducks, including mergansers, would be the same as that allowed in the Pacific Flyway. The possession limit would be twice the daily bag limit. The daily bag limit for coots and common moorhens would be 25, singly or in the aggregate. The possession limit for coots and common moorhens would be twice the daily bag limit.

For geese, the Colorado River Indian Tribes propose a season of November 21, 1998, through January 17, 1999. The daily bag and possession limits for geese would be 4.

In 1996, the tribe conducted a detailed assessment of dove hunting. Results showed approximately 16,100 mourning doves and 13,600 white-winged doves were harvested by approximately 2,660 hunters who averaged 1.45 hunter-days. Field observations and permit sales indicate that fewer than 200 hunters participate in waterfowl seasons. Under the proposed regulations described here and, based upon past seasons, the tribes and the Service estimate harvest will be similar.

Hunters must have a valid Colorado River Indian Reservation hunting permit in their possession while hunting. As in the past, the regulations would apply both to tribal and non-tribal hunters, and non-toxic shot is required for waterfowl hunting. The Service proposes to approve the Colorado River Indian Tribes regulations for the 1998–99 hunting season.

(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Non-Tribal Hunters)

For the past several years, the Confederated Salish and Kootenai Tribes and the State of Montana have entered into cooperative agreements for the regulation of hunting on the Flathead Indian Reservation. The State and the tribes are currently operating under a cooperative agreement signed in 1990 that addresses fishing and hunting management and regulation issues of mutual concern. This agreement enables all hunters to utilize waterfowl hunting opportunities on the reservation. The tribes proposed special regulations for waterfowl hunting were submitted to the Service in a June 8, 1998, proposal.

As in the past, tribal regulations for non-tribal members would be at least as restrictive as those established for the Pacific Flyway portion of Montana. Goose season dates would also be at least as restrictive as those established for the Pacific Flyway portion of Montana.

Shooting hours for waterfowl hunting on the Flathead Reservation are sunrise to sunset. Steel, bismuth-tin, or other Federally-approved non-toxic shots are the only legal shotgun loads on the reservation for waterfowl or other game birds.

The requested season dates and bag limits are generally similar to past regulations. Harvest levels are not expected to change significantly. Standardized check station data from the 1993–94 and 1994–95 hunting seasons indicated no significant changes in harvest levels and that the large majority of the harvest is by non-tribal hunters.

The Service proposes to approve the tribes' request for special migratory bird regulations for the 1999–99 hunting season.

(c) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Non-Tribal Hunters)

The Crow Creek Indian Reservation has a checkerboard pattern of land ownership, with much of the land

owned by non-Indians. Since the 1993–94 season, the tribe has selected special waterfowl hunting regulations independent of the State of South Dakota. The tribe observes migratory bird hunting regulations contained in 50 CFR part 20.

In a May 13, 1998, proposal, the tribe requested that a duck and goose season starting approximately October 3, 1998, and running until January 10, 1998, or for the maximum number of days allowed under final Federal frameworks, with the same daily bag and possession limits permitted by the final Federal frameworks. The season and bag limits would be essentially the same as last year, given the final Federal frameworks. In addition to the above goose season, the tribe has also proposed a light goose only season from February 17 through March 10, 1999.

The tribe expects harvest to be low because of the small number of hunters. In 1994–95, duck harvest was 48 birds, down from 67 in 1993–94. Goose harvest during recent past seasons has been less than 100 geese. Harvest for the 1998–99 coming season should be similar.

The tribe also requests a sandhill crane season from September 19 to October 25, 1998. Bag and possession limits would follow final Federal frameworks.

The Service proposes to approve the tribal requests provided that the tribe's light goose season is limited to no more than 107 days of hunting. Under the Migratory Bird Treaty, all non-tribal hunting season are limited to no more than 107 days. The Service also reminds the tribe that all sandhill crane hunters are required to obtain a Federal sandhill crane permit. As such, the tribe should contact the Service for further information on obtaining the needed permits. In addition, as with all other groups, the Service requests the tribe continue to survey and report harvest.

(d) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

In 1996, for the first time, the Service and the Fond du Lac Band of Lake Superior Chippewa Indians cooperated to establish special migratory bird hunting regulations for tribal members. The Fond du Lac's May 27, 1998, proposal covers land set apart for the band under the Treaty of 1854 in northeast Minnesota.

The band's proposal for 1998–99 is essentially the same as that approved by the Service last year. Specifically, the Fond du Lac Band proposes a September 19 to November 22, 1998, season on ducks, mergansers, coots and moorhens, and a September 5 to November 22, 1998, season for geese. For sora and Virginia rails, snipe, and woodcock, the Fond du Lac Band proposes a September 1 to November 22, 1998, season. Proposed bag limits would consist of the following:

Ducks

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

Mergansers

Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Geese

Daily Bag Limit: 10 geese.

Coots and Common Moorhens (Common Gallinules)

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Daily Bag and Possession Limit: 25 sora and Virginia rails singly, or in the aggregate.

Common Snipe

Daily Bag Limit: 8 common snipe.

Woodcock

Daily Bag Limit: 5 woodcock.

The following general conditions apply:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

The Band and the Service anticipate harvest will be fewer than 500 ducks and geese and 150 coots.

The Service proposes to approve the request for special migratory bird hunting regulations for the Fond du Lac Band of Lake Superior Chippewas.

(e) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

In the 1995–96 migratory bird seasons, the Grand Traverse Band of Ottawa and Chippewa Indians and the Service first cooperated to establish special regulations for waterfowl. The Grand Traverse Band is a self-governing, federally recognized tribe located on the west arm of Grand Traverse Bay in Leelanau County, Michigan. The Grand Traverse Band is a signatory tribe of the Treaty of 1836. The Service has approved special regulations for tribal members of the 1836 treaty's signatory tribes on ceded lands in Michigan since the 1986–87 hunting season.

For the 1998–99 season, the Grand Traverse Band of Ottawa and Chippewa Indians proposes a tribal member duck season that would run from September 20, 1998, through January 20, 1999. A daily bag limit of 10 would include no more than 1 pintail, 1 canvasback, 1 hooded merganser, 2 black ducks, 2 wood ducks, 2 redheads, and 5 mallards (only 2 of which may be hens).

For Canada geese, the tribe proposes a September 1 through November 30, 1998, and a January 1 through February 8, 1999, season. For white-fronted geese, brant, and snow geese, the tribe proposes an October 1 through November 30, 1998, season. The daily bag limit for all geese (including brant) would be 5 birds. Based on Service information, it is unlikely that any Canada geese from the Southern James Bay Population would be harvested by the tribe.

For woodcock, snipe, and sora rail, the tribe proposes a September 1 to November 14, 1998, season. The daily bag limit shall not exceed 5 birds per species.

All other Federal regulations contained in 50 CFR part 20 would apply.

The tribe proposes to closely monitor harvest through game bag checks, patrols, and mail surveys. In particular, the tribe proposes monitoring the harvest of Southern James Bay Canada geese to assess any impacts of tribal hunting on the population.

The Service proposes to approve the Grand Traverse Band of Ottawa and Chippewa Indian's requested 1998–99 special migratory bird hunting regulations.

(f) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Since 1985, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights for migratory birds in Wisconsin. The specific regulations were established by the Service in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (GLIFWC, which represents the various bands). Beginning in 1986, a tribal season on ceded lands in the western portion of the State's Upper Peninsula was developed in coordination with the Michigan Department of Natural Resources, and the Service has approved special regulations for tribal members in both Michigan and Wisconsin since the 1986–87, hunting season. In 1987, the GLIFWC requested and the Service approved special regulations to permit tribal members to hunt on ceded lands in Minnesota, as well as in Michigan and Wisconsin. The States of Michigan and Wisconsin concurred with the regulations, although Wisconsin has raised some concerns each year. Minnesota did not concur with the regulations, stressing that the State would not recognize Chippewa Indian hunting rights in Minnesota's treaty area until a court with jurisdiction over the State acknowledges and defines the extent of these rights. The Service acknowledged the State's concern, but pointed out that the United States Government has recognized the Indian hunting rights decided in the Voigt case, and that acceptable hunting regulations have been negotiated successfully in both Michigan and Wisconsin even though the Voigt decision did not specifically address ceded land outside Wisconsin. The Service believes this is appropriate because the treaties in question cover ceded lands in Michigan (and Minnesota), as well as in Wisconsin. Consequently, in view of the above, the Service has approved special regulations since the 1987–88 hunting season on ceded lands in all three States. In fact, this recognition of the principle of reserved treaty rights for band members to hunt and fish was pivotal in a Service decision to approve a special 1991–92 season for the 1836 ceded area in Michigan.

Recently, certain GLIFWC member bands have brought suit to resolve the issue of hunting, fishing and gathering rights in the Minnesota ceded areas covered under the 1837 and 1854 treaties. The Federal Government has intervened in support of the bands.

In a May 29, 1998, letter, the GLIFWC proposed off-reservation special migratory bird hunting regulations for the 1998–99 seasons. Details of the proposed regulations are shown below. In general, the proposal is essentially the same as the regulations approved for the 1997–98 season.

Results of the 1997–98 hunter survey show that 1,022 ducks and 183 geese were harvested under an anticipated harvest of 3,000 ducks and 900 geese. Under the proposed regulations, harvest is expected to be similar to last year and most likely would not exceed 3,000 ducks and 900 geese.

The Service believes that regulations advanced by the GLIFWC for the 1998–99 hunting season are biologically acceptable and recommends approval. If the regulations are finalized as proposed, the Service would request that the GLIFWC closely monitor the member band duck harvest and take any actions necessary to reduce harvest if locally nesting populations are being significantly impacted.

The Commission and the Service are parties to a Memorandum of Agreement (MOA) designed to facilitate the ongoing enforcement of Service-approved tribal migratory bird regulations. Its intent is to provide long-term cooperative application.

Also, as in recent seasons, the proposal contains references to Chapter 10 of the Migratory Bird Harvesting Regulations of the Model Off-Reservation Conservation Code. Chapter 10 regulations parallel State and Federal regulations and, in effect, are not changed by this proposal.

The GLIFWC's proposed 1998–99 waterfowl hunting season regulations are as follows:

Ducks

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 5 mergansers.

B. Michigan 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Geese: Canada Geese

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 10 Canada geese, minus the number of blue, snow or white-fronted geese taken.

B. Michigan, 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 1998. In addition, the same dates and season length permitted the State of Michigan during the Special September Canada goose Season.

Daily Bag Limit: 10 Canada geese, minus the number of blue, snow or white-fronted geese taken. In addition, the same bag limit permitted the State of Michigan during the Special September Canada goose Season.

Geese: Blue, Snow and White-fronted Geese

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 10 geese, minus the number of Canada geese taken.

B. Michigan 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 10 geese, minus the number of Canada geese taken.

Other Migratory Birds: All Ceded Areas

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.

C. Common Snipe

Season Dates: Begin September 15 and end December 1, 1998.

Daily Bag Limit: 8 common snipe.

D. Woodcock

Season Dates: Begin September 8 and end December 1, 1998

Daily Bag Limit: 5 woodcock.

General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State laws. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

5. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan and Minnesota will comply with tribal codes that contain provisions that parallel applicable State laws concerning duck blinds and/or decoys.

(g) Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico (Tribal Members and Non-Tribal Hunters)

The Jicarilla Apache Tribe has had special migratory bird hunting regulations for tribal members and nonmembers since the 1986–87 hunting season. The tribe owns all lands on the reservation and has recognized full wildlife management authority. In general, the proposed seasons would be more conservative than allowed by the Federal frameworks of last season and by States in the Pacific Flyway.

In a May 13, 1998, proposal, the tribe proposed a 1998–99 waterfowl season opening date of October 3 and a closing date of November 30, 1998. Daily bag and possession limits would be the same as Pacific Flyway States. The tribe proposes a new, restrictive season on Canada geese with a 1-bird daily bag limit. Other regulations specific to the Pacific Flyway guidelines for New Mexico would be in effect.

The Jicarilla Game and Fish Department's annual estimate of waterfowl harvest is relatively small. In the 1996–97 season, estimated duck harvest was 816, a significant decrease from 1,234 in 1996–97. The species composition in the past has included mainly mallards, gadwall, wigeon, and teal. Northern pintail comprised only 2 percent of the total harvest in 1997.

The proposed regulations are essentially the same as were established last year, with the exception of an open season on Canada geese. The tribe anticipates the maximum 1998–99 waterfowl harvest would be around 1,000 to 1,400 ducks and 25 to 50 geese.

The Service proposes to approve the tribe's requested 1998–99 hunting seasons.

(h) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Non-Tribal Hunters)

The Kalispel Reservation was established by Executive Order in 1914, and currently comprises approximately 4,600 acres. The tribe owns all Reservation land and has full management authority. The Kalispel Tribe has a fully developed wildlife program with hunting and fishing codes. The tribe enjoys excellent wildlife management relations with the State. The tribe and the State have an operational Memorandum of Understanding with emphasis on fisheries but also for wildlife. The non-tribal member seasons described below pertain to a 176-acre waterfowl management unit. The tribe is utilizing this opportunity to rehabilitate an area that needs protection because of past land use practices, as well as to provide additional waterfowl hunting in the area.

In 1996, for the first time, the requested regulations also included a proposal for Kalispel-member only migratory bird hunting on Kalispel-ceded lands within Washington, Montana, and Idaho.

For the 1998–99 migratory bird hunting seasons, the Kalispel Tribe proposed, in a June 29, 1998, letter, tribal and non-tribal member waterfowl seasons. For non-tribal members, the tribe requests seasons which begin September 1, 1998 and end January 31, 1999. In that period, non-tribal hunters would be allowed to hunt on weekends, holidays and continuously in the month of December for a total of about 99 days. Hunters should obtain further information on days from the Kalispel Tribe. Daily bag and possession limits would be the same as those for the State of Washington. The tribe reports a 1997–98 non-tribal harvest of 6 ducks and 0 geese. Under the proposal, the tribe expects harvest to be similar to last year and less than 200 geese and 250 ducks.

All other State and Federal regulations contained in 50 CFR part 20, such as use of steel shot and possession of a signed migratory bird hunting stamp, would be required.

For tribal members on Kalispel-ceded lands, the Kalispel proposes outside frameworks for ducks and geese of September 1, 1998, through January 31, 1999. However, during that period, the tribe proposes that the season run continuously. Daily bag and possession limits would be the same as those for the States of Washington and Idaho. The tribe reports that there was no 1997–98 tribal harvest. Under the proposal, the tribe expects harvest to be less than 250 geese and 250 ducks.

Tribal members would be required to possess a signed Federal migratory bird stamp and a tribal ceded lands permit.

The Service proposes to approve the regulations requested by the Kalispel Tribe provided that the non-tribal seasons conform to final Federal frameworks for the Pacific Flyway. For the 1998–99 season, outside Federal frameworks in the Pacific Flyway are October 3, 1998, through January 17, 1999 for ducks and geese.

(I) Klamath Tribe, Chiloquin, Oregon (Tribal Members Only)

The Klamath Tribe currently has no reservation, per se. However, the Klamath Tribe has reserved hunting, fishing and gathering rights within its former reservation boundary. This area of former reservation, granted to the Klamaths by the Treaty of 1864, is over 1 million acres. Tribal natural resource management authority is derived from the Treaty of 1864, and carried out cooperatively under the judicially enforced Consent Decree of 1981. The parties to this Consent Decree are the Federal Government, the State of Oregon and the Klamaths. The Klamath Indian Game Commission sets the seasons. The tribal biological staff and tribal Regulatory Enforcement Officers monitor tribal harvest by frequent bag checks and hunter interviews.

In a July 14, 1998, letter, the Klamath Tribe proposed season dates that run from October 1, 1998, through January 31, 1999. Daily bag limits would be 9 for ducks and 6 for geese with possession limits twice the daily bag limit. The daily bag and possession limit for coots would be 25. Shooting hours would be one-half hour before sunrise to one-half hour after sunset.

Based on the number of birds produced in the Klamath Basin, the tribe expects that this year's harvest will be similar to last year's. Information on tribal harvest suggests that more than 70 percent of the annual goose harvest is local birds produced in the Klamath basin.

The Service proposes to approve the regulations of the Klamath Tribe.

(j) Lower Brule Sioux Tribe, Lower Brule Reservation, Lower Brule, South Dakota (Tribal Members and Non-Tribal Hunters)

The Lower Brule Sioux Tribe first established tribal migratory bird hunting regulations for the Lower Brule Reservation in 1994. The Lower Brule Reservation is about 214,000 acres in size and is located on and adjacent to the Missouri River, south of Pierre. Land ownership on the reservation is mixed, and until recently, the Lower Brule Tribe had full management authority over fish and wildlife via a MOA with the State of South Dakota. The MOA provided the tribe jurisdiction over fish and wildlife on reservation lands, including deeded and Corps of Engineers taken lands. However, the tribe is currently in litigation with the State of South Dakota regarding jurisdiction. A recent Federal District Court ruling and consequent Circuit Court decisions have jeopardized the Tribal/State Agreement that had been in place from 1986 to 1996. At this time, the ruling is being appealed to the U.S. Supreme Court and a motion for a stay has been filed. For the 1998–99 season, the two parties have come to a tentative agreement and meetings between the Lower Brule Sioux Tribe and the South Dakota Department of Game, Fish and Parks are continuing. It is anticipated that an agreement will be established and management authority clarified to allow the public a clear understanding of the Lower Brule Sioux Wildlife Department license requirements and hunting season regulations. The Lower Brule Reservation waterfowl season is open to tribal and non-tribal hunters.

For the 1998–99 migratory bird hunting season, the Lower Brule Sioux Tribe proposes a duck and coot season length of 97 days, the same number of days tentatively allowed in the High Plains Management Unit for this season. The tribe's proposed season would run from October 3, 1998, through January 7, 1999. The daily bag limit would be 6 birds, including no more than 5 mallards (only 1 of which may be a hen), 1 pintail, 2 redheads, 2 wood ducks, 1 canvasback, 1 hooded merganser, and 1 mottled duck. The daily bag limit for coots would be 15. Possession limits would be twice the daily bag limits. The tribe also proposes a 2-day youth waterfowl weekend on September 26 and 27, 1998.

The tribe's proposed dark goose season would run from October 17, 1998, through January 10, 1999, with a daily bag limit of 3 dark geese, which may not include more than 1 white-fronted geese. The tribe's proposed light goose season would run from October 17, 1998, through January 10, 1999, and February 18 through March 10, 1999. The light goose daily bag limit would be 10. Possession limits would be twice the daily bag limits.

The tribe also proposes a tundra swan season running from October 17, 1998, to January 10, 1999 with a 1 tundra swan season bag limit.

In the 1997–98 season, hunters harvested an estimated 2,504 geese and 609 ducks. In 1994, duck harvest species composition was primarily mallard (57 percent), gadwall (10 percent), and green-winged teal (10 percent). Goose harvest is traditionally, 98 percent Canada geese.

The tribe anticipates a duck harvest similar to last year, a goose harvest similar to the target harvest level of 3,000 to 4,000 geese, and 3 to 5 tundra swans if its 1998–99 regulations are approved. All basic Federal regulations contained in 50 CFR part 20, including the use of steel shot, Migratory Waterfowl Hunting and Conservation Stamp, etc., would be observed by the tribe's proposed regulations. In addition, the Lower Brule Sioux Tribe has an official Conservation Code that was established by Tribal Council Resolution on June 1982 and updated in 1996.

The Service proposes to approve the tribe's proposed regulations for the Lower Brule Reservation with two exceptions. First, Federal frameworks for tundra swan hunting in South Dakota do not allow tundra swan seasons west of the Missouri River because of concerns for the potential harvest of trumpeter swans. Thus, the Service cannot approve the tribe's requested tundra swan season. Second, the July 17, 1998, (63 FR 38700) proposed early-season frameworks provided for a 1-day special youth waterfowl hunt. Any special youth waterfowl hunt for non-tribal members should conform to the final Federal frameworks to be published in late August.

(k) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Non-Tribal Hunters)

Since 1985, the Service has established uniform migratory bird hunting regulations for tribal members and nonmembers on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The nation owns almost all lands on the reservation and has full wildlife management authority.

In a July 20, 1998, communication, the tribe proposed special migratory bird hunting regulations on the reservation for both tribal and non-tribal members for the 1998–99 hunting season for ducks (including mergansers), Canada geese, coots, band-tailed pigeons, and mourning doves. For waterfowl, the Navajo Nation requests the earliest opening dates and longest seasons, and the same daily bag and possession limits, permitted Pacific Flyway States under final Federal frameworks.

For both mourning dove and band-tailed pigeons, the Navajo Nation proposes seasons of September 1 through 30. The Navajo Nation also proposes daily bag limits of 10 and 5 for mourning dove and band-tailed pigeon, respectively. Possession limits would be twice the daily bag limits.

In addition, the nation proposes to require tribal members and non-members to comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 pertaining to shooting hours and manner of taking. In addition, each waterfowl hunter 16

years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

The Service proposes to approve the Navajo Nation request for these special regulations for the 1998–99 migratory bird hunting seasons.

(l) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Since 1991–92, the Oneida Tribe of Indians of Wisconsin and the Service have cooperated to establish uniform regulations for migratory bird hunting by tribal and non-tribal hunters within the original Oneida Reservation boundaries. Since 1985, the Oneida Tribe's Conservation Department has enforced their own hunting regulations within those original reservation limits. The Oneida Tribe also has a good working relationship with the State of Wisconsin and the majority of the seasons and limits are the same for the tribe and Wisconsin.

In a May 19, 1998, letter to the Service, the tribe proposed special migratory bird hunting regulations. For ducks, the tribe described the general "outside dates" as being September 19 through November 15, 1998, inclusive. The tribe proposes a daily bag limit of 6 birds, which could include no more than 4 mallards (1 hen mallard), 5 wood ducks, 1 canvasback, 1 redhead, 2 pintails, and 1 hooded merganser.

For geese, the tribe recommends a season between September 1 and December 31, 1998, with a Canada goose bag limit of 3 tribally-tagged geese per day. The tribe will reissue 3 tags when 3 birds are registered. The possession limit for Canada geese is 6. The tribe will also close the season during the gun deer season of November 21 to 29, 1998. If a quota of 150 geese is attained before the season concludes, the tribe will recommend closing the season early.

For woodcock, the tribe proposes a season between September 1 and November 15, 1998, with a daily bag and possession limit of 5 and 10, respectively.

The tribe proposes shooting hours be one-half hour before sunrise to sunset. Tribal members and non-tribal members hunting on the Reservation or on lands under the jurisdiction of the tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR, with the following exceptions: Indian hunters would be exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity would not be limited to 3 shells.

The Service proposes to approve the request for special migratory bird hunting regulations for the Oneida Tribe of Indians of Wisconsin. The Service again notes that the Oneida tribe has traditionally delayed the opening of their duck season to September 15 to avoid possible significant impacts on local nesting duck populations and commends the tribe for these conservation efforts.

(m) Point No Point Treaty Tribes, Kingston, Washington (Tribal Members Only)

For the first time in 1996, the Service and the Point No Point Treaty Tribes, consisting of the Skokomish, Port Gamble S'klallam, Jamestown S'klallam, and Elwha S'klallam tribes, cooperated to establish special regulations for migratory bird hunting. The four tribes have reservations located on the Olympic Peninsula in Washington. All four tribes have successfully administered tribal hunting regulations since 1985 and each tribe has a comprehensive hunting ordinance.

The tribes' July 20, 1998, proposal requests seasons for ducks, geese, brant, coots, snipe, and mourning doves. For ducks, coots, geese (including brant), and snipe, the tribes request a September 15, 1998, to January 15, 1999, season with a daily bag limit of 7 ducks, 25 coots, 4 geese (including no more than 2 brant or 3 light geese), and 8 snipe. The duck daily bag limit would include mergansers and could include no more than 2 hen mallards, 3 pintails, 1 canvasback, and 2 redheads. The season is closed on harlequin ducks and Aleutian Canada geese. All possession limits would be twice the daily bag limit. For mourning doves, the tribes propose a September 1 to September 30, 1998, season with a daily bag limit of 10.

Tribal harvest last year under similar regulations was approximately 110 ducks, 25 geese and 20 coots. The Service proposes to approve the Point No Point Treaty Tribes requested 1998–99 regulations.

(n) Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho (Non-Tribal Hunters)

Almost all of the Fort Hall Indian Reservation is tribally-owned. The tribes claim full wildlife management authority throughout the reservation, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially for hunting by non-tribal members on reservation lands owned by non-Indians. As a compromise, since 1985, the Service has established the same waterfowl hunting regulations on the reservation and in a surrounding off-reservation State zone. The regulations were requested by the tribes and provided for different season dates than in the remainder of the State. The Service agreed to the season dates because they seemed to provide additional protection to mallards and pintails. The State of Idaho concurred with the zoning arrangement. The Service has no objection to the State's use of this zone again in the 1998–99 hunting season, provided the duck and goose hunting season dates are the same as on the reservation.

In a July 29, 1998, proposal for the 1998–99 hunting season, the Shoshone-Bannock Tribes requested a continuous duck (including mergansers) season with the maximum number of days and the same daily bag and possession limits permitted Pacific Flyway States, under final Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as last year, the season would have an opening date of October 4, 1998, and a closing date of January 11, 1999. Coot and snipe season dates would be the same as for ducks, with the same daily bag and possession limits permitted Pacific Flyway States. The tribes anticipate harvest will be between 2,000 and 5,000 ducks.

The tribes also requested a continuous goose season with the maximum number of days and the same daily bag and possession limits permitted Idaho under Federal frameworks. The tribes propose that, if the same number of hunting days are permitted as in previous years, the season would have an opening date of October 4, 1998, and a closing date of January 11, 1999. The tribes anticipate harvest will be between 4,000 and 6,000 geese.

Non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, pertaining to shooting hours, use of steel shot, and manner of taking. Special regulations established by the Shoshone-Bannock Tribes also apply on the reservation.

The Service notes that the requested regulations are nearly identical to those of last year and proposes they be approved for the 1998–99 hunting season.

(o) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

The Squaxin Island Tribe of Washington and the Service have cooperated since 1995 to establish special tribal migratory bird hunting

regulations. These special regulations would apply to tribal members on the Squaxin Island Reservation, located in western Washington near Olympia, and all lands within the traditional hunting grounds of the Squaxin Island Tribe.

For the 1998–99 season, the tribe proposes establishing duck, coot, and snipe seasons that would run from September 15, 1998, through January 15, 1999. The daily bag limit for ducks would be 5 per day and could include only 1 canvasback. The season on harlequin ducks would be closed. For coots and snipe, the daily bag limit would be 25 and 8, respectively.

For geese, the tribe proposes establishing a season that would run from September 15, 1998, through January 15, 1999. The daily bag limit for geese would be 4 per day and could include only 2 snow geese and 1 dusky Canada goose. The season on Aleutian and Cackling Canada geese would be closed.

For brant, the tribe proposes establishing a September 15 to December 31, 1998, season with a daily bag limits of 2 birds per day. The tribe also proposes a September 15 to December 1, 1998, season for band-tailed pigeons with a daily bag limit of 2 per day.

In all cases, the possession limit would be twice the daily bag limit. Shooting hours would be from one-half hour before sunrise to one-half hour after sunset and steel shot would be required for migratory bird hunting. Further, the tribe requires all harvest be reported to their Natural Resources Office within 72 hours.

In 1995, the tribe reported that there was no harvest of any species. Tribal regulations are enforced by the tribe's Law Enforcement Department. The Service proposes to approve the Squaxin Island Tribe's requested 1998–99 special migratory bird hunting regulations.

(p) Swinomish Indian Tribal Community, LaConner, Washington (Tribal Members Only)

In 1996, the Service and the Swinomish Indian Tribal Community began cooperating to establish special regulations for migratory bird hunting. The Swinomish Indian Tribal Community is a federally recognized Indian tribe consisting of the Suiattle, Skagit, and Kikialos tribes. The Swinomish Reservation was established by the Point Elliott Treaty of 1855 and lies in the Puget Sound area north of Seattle, Washington.

The Tribal Community proposes an off-reservation duck, merganser, Canada goose, brant, and coot season opening on the earliest possible date allowed by the final Federal frameworks for the Pacific Flyway and closing 30 days after the State of Washington closes. Daily bag and possession limits would be the same as those allowed by the State except that the Swinomish request an additional three birds of each species over that allowed by the State.

The Community anticipates that the proposed regulations will result in the harvest of approximately 200 to 300 ducks, 25 to 50 Canada geese, 75 mergansers, 100 brant, and 50 coot. The Swinomish propose a tag and permit system to monitor harvest and will implement steps to limit harvest where conservation is needed. All tribal regulations will be enforced by tribal fish and game officers.

On reservation, the Tribal Community proposes a hunting season for the above mentioned species beginning on the earliest possible opening date and closing March 9, 1999. The Swinomish propose to manage harvest by a tagging system and anticipate harvest will be similar to that expected off reservation.

The Service believes the estimated harvest by the Swinomish will be minimal and will not adversely effect migratory bird populations. The Service proposes to approve the Tribal Community's proposed regulations for the 1998–99 season.

(q) The Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Non-Tribal Hunters)

The Tulalip Tribes are the successors in interest to the tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855. The Tulalip Tribes' government is located on the Tulalip Indian Reservation at Marysville, Washington. The tribes or individual tribal members own all of the land on the reservation, and they have full wildlife management authority. All lands within the boundaries of the Tulalip Tribes Reservation are closed to non-member hunting unless opened by Tulalip Tribal regulations.

In a July 22, 1998, letter, the Tulalip Tribes proposed tribal and non-tribal hunting regulations for the 1998–99 seasons. For ducks and coot, the proposed season for tribal members would be from September 15, 1998, through February 1, 1999. In the case of non-tribal hunters hunting on the reservation, the season would be the latest closing date and the longest period of time allowed for the State of Washington under final Pacific Flyway Federal frameworks. Daily bag and possession limits for Tulalip Tribal members would be 6 and 12 ducks, respectively, except that for blue-winged teal, canvasback, harlequin, pintail, and wood duck, the bag and possession limits would be the same as those established for the State of Washington in accordance with final Federal frameworks. For non-tribal hunters, bag and possession limits would be the same as those permitted the State of Washington under final Federal frameworks. Non-tribal members should check with the Tulalip tribal authorities regarding additional conservation measures which may apply to specific species managed within the region.

For geese, tribal members are proposed to be allowed to hunt from September 15, 1998, through February 1, 1999. Non-tribal hunters would be allowed the longest season and the latest closing date permitted for the State of Washington under final Federal frameworks. For tribal hunters, the goose daily bag and possession limits would be 6 and 12, respectively, except that the bag limits for brant, cackling Canada geese and dusky Canada geese would be those established for the Pacific Flyway in accordance with final Federal frameworks. For non-tribal hunters hunting on reservation lands, the daily bag and possession limits would be those established in accordance with final Federal frameworks for the State of Washington. The Tulalip Tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the tribe. Non-tribal hunters sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face.

Although the season length requested by the Tulalip Tribes appears to be quite liberal, harvest information indicates a total take by tribal and non-tribal hunters under 1,000 ducks and 500 geese, annually. The Service proposes approval of the Tulalip Tribes request for the above seasons. The Service requests that harvest be monitored closely and regulations be reevaluated for future years if harvest becomes too great in relation to population numbers.

(r) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Non-Tribal Hunters)

The White Mountain Apache Tribe owns all reservation lands, and the tribe has recognized full wildlife management authority. The White Mountain Apache Tribe has requested regulations that are essentially unchanged from those agreed to for the 1997–98 hunting year.

The hunting zone for waterfowl is restricted and is described as: the entire length of the Black and Salt Rivers forming the southern boundary of the reservation; the White River, extending from the Canyon Day Stockman Station to the Salt River; and all stock ponds located within Wildlife Management Units 4, 6 and 7. Tanks located below the Mogollon Rim, within Wildlife Management Units 2 and 3 will be open to waterfowl hunting during the 1998–99 season. All other waters of the reservation would be closed to waterfowl hunting for the 1998–99 season.

For non-tribal and tribal hunters, the tribe proposes a continuous duck, coot, merganser, gallinule and moorhen hunting season, with an opening date of October 24, 1998, and a closing date of January 17, 1999. The tribe proposes a daily duck (including mergansers) bag limit of 4, which may include no more than 2 redheads or 1 canvasback and 1 redhead, 1 pintail, and 3 mallards (including no more than 1 hen mallard). The daily bag limit for coots, gallinules and moorhens would be 25 singly, or in the aggregate.

For geese, the season is proposing a season from October 24, 1998, through January 17, 1999. Hunting would be limited to Canada geese, and the daily bag limit would be 2.

Season dates for band-tailed pigeons and mourning doves would run concurrently from September 1 through September 10, 1998, in Wildlife Management Units 7 and 10, only. Proposed daily bag limits for band-tailed pigeons and mourning doves would be 3 and 8, respectively.

Possession limits for the above species are twice the daily bag limits. Shooting hours would be from one-half hour before sunrise to sunset. There would be no open season for sandhill cranes, rails and snipe on the White Mountain Apache lands under this proposal. A number of special regulations apply to tribal and non-tribal hunters, which may be obtained from the White Mountain Apache Tribe Game and Fish Department.

The Service proposes to approve the regulations requested by the tribe for the 1998–99 seasons.

(s) Yankton Sioux Tribe, Marty, South Dakota (Tribal Members and Non-Tribal Hunters)

On May 18, 1998, the Yankton Sioux Tribe submitted a waterfowl hunting proposal for the 1998–99 season. The Yankton Sioux tribal waterfowl hunting season would be open to both tribal members and non-tribal hunters. The waterfowl hunting regulations would apply to tribal and trust lands within the external boundaries of the reservation.

For duck (including mergansers) and coots, the Yankton Sioux Tribe proposes a season starting October 17, 1998, and running for the maximum amount of days allowed under the final Federal frameworks. Daily bag and possession limits would be the same as those adopted by the State of South Dakota.

For geese, the tribe has requested a dark geese (Canada geese, brant, white-fronts) season starting October 31, 1998, and ending January 31, 1999. The daily bag limit would be 3 geese (including no more than 1 whitefront or brant). Possession limits would be twice the daily bag limit. For snow geese, the proposed hunting season would start October 31, 1998, and end January 24, 1999. Daily bag and possession limits would be the same as those adopted by the State of South Dakota.

All hunters would have to be in possession of a valid tribal license while hunting on Yankton Sioux trust lands. Tribal and non-tribal hunters must comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, pertaining to shooting hours and the manner of taking. Special regulations established by the Yankton Sioux Tribe also apply on the reservation.

During the 1997–98 hunting season, the tribe reported that 54 non-tribal hunters took 225 Canada geese, 30 snow geese, and 60 ducks. Tribal members harvested less than 75 geese and 50 ducks.

The Service concurs with the Yankton Sioux proposal for the 1998–99 hunting season.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests and wants to obtain comments from all interested areas of the public, as well as other government agencies. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. However, special circumstances involved in the establishment of these regulations limit the amount of time the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need to establish final rules before September 1, 1998, and the unavailability until late July of specific reliable data for each year's status of waterfowl. Therefore, the Service believes allowing comment periods past the dates specified is contrary to the public interest.

E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could the Service do to make the rule easier to understand?

Send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, D.C. 20240. Comments may also be e-mailed to: Exsec@ios.doi.gov

Comment Procedure

It is the policy of the Department of the Interior to afford the public an opportunity to participate in the rulemaking process, whenever practical. Accordingly, interested persons may participate by submitting written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634-ARLSQ, 1849 C Street, NW., Washington, D.C. 20240. The public may inspect comments during normal business hours at the Service's office in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. The Service will consider all comments received and will try to acknowledge received comments, but may not provide an individual response to each commenter.

Public Comments Received

The Service received two comments regarding the Notice of Intent published

on March 20, 1998, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. The South Dakota Department of Game, Fish, and Parks (South Dakota) commented on the proposal by the Lower Brule Sioux Tribes. South Dakota questioned whether a tundra swan permit would be required or whether all licensed waterfowl hunters would be allowed to take a swan during the Tribes' proposed tundra swan season. They further questioned whether hunters would be queried after the season to determine the harvest, age ratio, date and location of kill, and unretrieved kill. South Dakota also believed that any special youth season on tribal land should conform to the same framework allowed for the State's youth hunting season.

The Wisconsin Department of Natural Resources (Wisconsin) commented on the GLIFWC's proposal. Wisconsin suggested monitoring the impact of the daily bag limit on giant Canada goose restoration efforts and that the Service and GLIFWC initiate and complete studies to show that current GLIFWC duck regulations have no negative impact on local populations before expanding hunting opportunities during time periods when local birds are most vulnerable. Wisconsin also requested that tribal members honor the noon opening for shooting hours for the first day of the State's duck season and comply with the State's open water hunting restrictions.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.** In addition, an August 1985 Environmental Assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, the Service has initiated section 7 consultation under the Endangered Species Act for the proposed migratory bird hunting seasons including those which occur on Federally recognized Indian reservations and ceded lands.

The Service will include findings from these consultations in a biological opinion and may cause modification of some regulatory measures proposed in this document. The final rule will reflect any modifications. The Service's biological opinion resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and Office of Migratory Bird Management, U.S. Fish and Wildlife Service, at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act

In the March 20, 1998, **Federal Register**, the Service reported measures it took to comply with requirements of the Regulatory Flexibility Act. One measure was to prepare a Small Entity Flexibility Analysis (Analysis) in 1996 documenting the significant beneficial economic effect on a substantial number of small entities. The Analysis estimated that migratory bird hunters would spend between $254 and $592 million at small businesses. Copies of the Analysis are available upon request from the Office of Migratory Bird Management. The Service is currently updating the 1996 Analysis with information from the 1996 National Hunting and Fishing Survey.

Executive Order (E.O.) 12866

This proposed rule is not economically significant and was not subject to review by the Office of Management and Budget (OMB) under E.O. 12866.

Paperwork Reduction Act

The Service examined these proposed regulations under the Paperwork Reduction Act of 1995 and found no information collection requirements. The various recordkeeping and reporting requirements imposed under other hunting regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. OMB has approved these information collection requirements and assigned clearance numbers 1018–0015 (expires 08/31/1998) and 1018–0023 (expires 09/30/2000). The Service 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.

Unfunded Mandates Reform Act

The Service has determined and certifies in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Taking Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. The Service annually prescribes frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more

restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulation. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals contained in this proposed rule, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Based on the results of soon to be completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting regulations for migratory birds beginning as early as September 1, 1998, on certain Federal Indian reservations, off-reservation trust lands, and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have full wildlife management authority, the regulations only for tribal members or for both tribal and non-tribal members may differ from those established by States in which the reservations, off-reservation trust lands, and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, coot, gallinules (including moorhen), woodcock, common snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks (including mergansers) and geese.

The rules that eventually will be promulgated for the 1998–99 hunting season are authorized under the Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), as amended. The MBTA authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

Dated: August 7, 1998.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–21936 Filed 8–13–98; 8:45 am]

BILLING CODE 4310–55–P

Friday
August 14, 1998

Part VI

Department of Education

34 CFR Part 303

Office of Special Education and Rehabilitative Services; Part C of the Individuals With Disabilities Education Act (IDEA) Amendments of 1997; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 303

Office of Special Education and Rehabilitative Services; Part C of the Individuals With Disabilities Education Act (IDEA) Amendments of 1997

AGENCY: Department of Education.

ACTION: Reopening of the comment period.

SUMMARY: The Secretary of Education (Secretary) reopens the comment period for receiving advice and recommendations from the public on whether to develop new regulations implementing the Early Intervention Program for Infants and Toddlers with Disabilities under Part C of the Individuals with Disabilities Education Act (IDEA).

DATES: The comment period will be open until 30 days following the future publication of the final regulations implementing part B of IDEA (34 CFR part 300), and containing conforming changes to Part C of IDEA (34 CFR part 303). A separate document announcing the specific closing date will be published after publication of those final regulations.

ADDRESSES: Comments should be addressed to Thomas Irvin, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3090, Mary E. Switzer Building, 330 C St., SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Thomas Irvin. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION:

Background

On April 14, 1998, the Secretary published in the **Federal Register** (63 FR 18290) final regulations governing Part H of IDEA, the Early Intervention Program for Infants and Toddlers with Disabilities (34 CFR part 303). Those final regulations made technical changes to part 303 to incorporate the statutory amendments to Part H that were added by the IDEA Amendments of 1997. The regulations became effective on July 1, 1998, and at that time, the Part H program was renamed "Part C."

In the same (April 14) issue of the **Federal Register** (63 FR 18297), the Secretary also published a notice soliciting advice and recommendations from the public—including persons with disabilities and their representatives, parents, members of interagency coordinating councils, service providers, program administrators, and Federal and State administrators—as to whether to develop new regulations implementing Part C. That comment period ended on July 31, 1998.

Invitation to Comment

The Secretary is reopening the comment period for the Part 303 regulations to further elicit the views of interested parties on whether additional revisions to those regulations are needed to implement the requirements of Part C of IDEA. In addition to considering further regulatory changes based on the IDEA Amendments of 1997, the Secretary also invites comments on whether to revise the regulations in areas unaffected by the statutory amendments.

If the Department regulates, it will do so consistent with its Principles for Regulating, under which the Department considers whether regulations are needed to promote quality and equality in educational opportunity, whether a demonstrated problem requires the issuance of regulations, whether regulations are needed to resolve ambiguity, and whether a uniform approach to a situation is appropriate. In developing regulations, the Department's policy is to provide flexibility and minimize burden to the extent consistent with ensuring the implementation of the Early Intervention Program for Infants and Toddlers with Disabilities, Part C of IDEA. The Department is particularly interested in public input on any areas in which the statutory changes in Part C of IDEA may need clarification.

The Secretary requests that each commenter identify her or his role in early intervention, special education, or regular education, if any, and the perspective from which she or he views the early intervention system—either as a representative of persons with disabilities or of an association, agency, type of service provider (public or private), or as an individual person with a disability, parent, or private citizen. The Secretary urges commenters to be specific regarding their comments, including identifying clearly the section or sections of the regulations (or of Part C of IDEA, if appropriate) that each comment addresses.

All comments submitted in response to this notice will be available for public inspection during and after the comment period in Room 3090, Mary E. Switzer Building, 330 C St., SW., Washington, DC, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

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Note: The official version of a document is the document published in the **Federal Register**.

(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: August 10, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–21890 Filed 8–13–98; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 434/P.L. 105–224

To provide for the conveyance of small parcels of land in the Carson National Forest and the Santa Fe National Forest, New Mexico, to the village of El Rito and the town of Jemez Springs, New Mexico. (Aug. 12, 1998; 112 Stat. 1252)

H.R. 1085/P.L. 105–225

To revise, codify, and enact without substantive change certain general and permanent laws, related to patriotic and national observances, ceremonies, and organizations, as title 36, United States Code, "Patriotic and National Observances, Ceremonies, and Organizations". (Aug. 12, 1998; 112 Stat. 1253)

H.R. 3504/P.L. 105–226

John F. Kennedy Center for the Performing Arts Authorization Act of 1998 (Aug. 12, 1998; 112 Stat. 1513)

H.R. 4237/P.L. 105–227

To amend the District of Columbia Convention Center and Sports Arena Authorization Act of 1995 to revise the revenues and activities covered under such Act, and for other purposes. (Aug. 12, 1998; 112 Stat. 1515)

S. 2344/P.L. 105–228

Emergency Farm Financial Relief Act (Aug. 12, 1998; 112 Stat. 1516)

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